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In the Supreme Court of the United States

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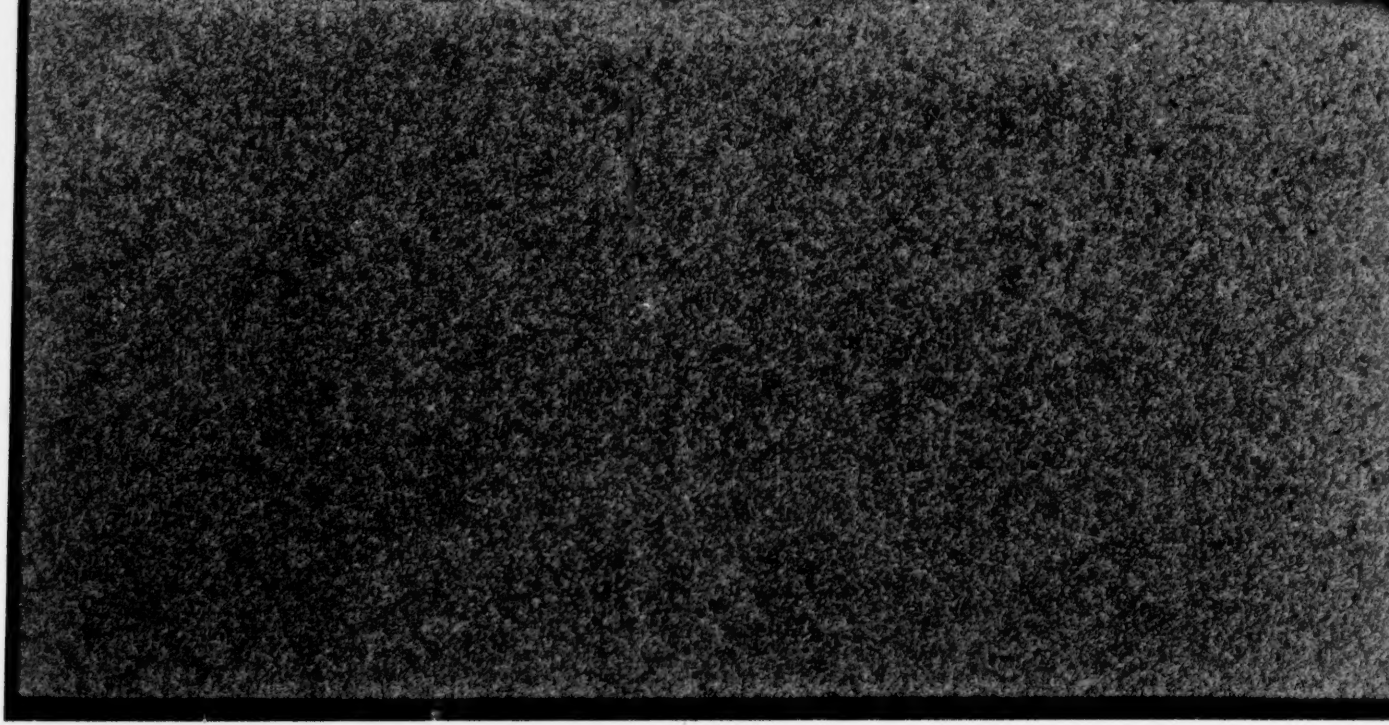

RICHMOND, VA., September 22, 1913.

To the Honorable A. A. Lilly,
Attorney General of West Virginia,
Charleston, West Virginia.

Please take notice that in the suit of the *Commonwealth of Virginia* v. *The State of West Virginia*, No. 2 Original, pending in the Supreme Court of the United States at Washington, D. C., I shall on Monday, the 13th day of October, 1913, move the said court to proceed with a further hearing and determination of said case, and to settle and determine all questions left open and undetermined by its decision rendered on the 6th day of March, 1911, and will base said motion on the record of the case and the facts stated in the within statement in writing, and exhibits filed therewith.

Respectfully,

COMMONWEALTH OF VIRGINIA,
By SAMUEL W. WILLIAMS,
Attorney General of Virginia.

In the Supreme Court of the United States

No. 2. Original. October Term, 1913.

COMMONWEALTH OF VIRGINIA,

v.

STATE OF WEST VIRGINIA.

In Equity.

MOTION OF THE COMPLAINANT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Commonwealth of Virginia, through Samuel W. Williams, her Attorney General, respectfully shows to the court:

1. That in the opinion of this court, delivered on March 6, 1911, by Mr. Justice Holmes, having ascertained the amount of $7,182,507.46 to be West Virginia's share of the principal debt, said:

> "We think it best at this stage to go no further, but to await the effect of a conference between the parties, which, whatever the outcome, must take place."

2. That on February 21st, 1913, the legislature of West Virginia, sitting in regular session, adopted a joint resolution, in words and figures as follows: viz.:

"Conference Committee's Substitute for House Substitute for Senate Joint Resolution No. 5.

(Adopted February 21, 1913)."

"Creating a commission, known as the Virginia debt commission, provide for arranging and settling with the Commonwealth of Virginia the proper proportion of the public debt of the original Commonwealth of Virginia, if any should be borne by West Virginia, to take into consideration all matters arising between the Commonwealth of Virginia and the State of West Virginia in reference to said original public debt, and to report its proceedings to the governor of the State.

"Whereas, the Commonwealth of Virginia instituted a suit in the Supreme Court of the United States against the State of West Virginia, to have the State of West Virginia's proportion of the public debt of Virginia as it stood before one thousand eight hundred and sixty-one, ascertained and satisfied; and,

"Whereas, at the October term, one thousand nine hundred and ten, the Supreme Court of the United States made a finding that the share of the principal debt of the original Commonwealth of Virginia to be borne by the State of West Virginia, was seven million one hundred and eighty-two thousand six hundred and seven dollars and forty-six cents; and,

"Whereas, said court did not fully and finally decide the question involved, but suggested that such proceedings and negotiations should be had between the States upon all the questions involved in said litigation, as might lead to a settlement of the same; therefore, be it

Resolved by the Senate of West Virginia, the House of Delegates concurring therein:

"That a commission of eleven members, known as the Virginia debt commission is hereby created. The members of said commission shall be appointed by the governor, two

of whom shall be chosen from each congressional district of the State, and one at large, not more than six of whom shall belong to any one political party, and all resignations or vacancies in the said commission as they occur shall be filled by the appointment of the governor.

"Said commission is authorized and directed to negotiate with the Commonwealth of Virginia, or with any person or committee owning or holding any part of the said indebtedness for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper, to be borne by the State of West Virginia.

"The commission is hereby directed to ascertain and report upon and give the utmost publicity to all the facts in relation to the pending suit instituted against the State of West Virginia by the Commonwealth of Virginia and to ascertain and report upon and give like publicity of all of the facts and conditions under which the West Virginia certificates are held or owned, together with the names and residences of the persons having the legal or equitable right to receive from West Virginia whatever may be ascertained to be payable thereon.

"To ascertain and report as to any part of the Virginia debt claimed against the State of West Virginia, which is owned or held or claimed to be due, at law or in equity, by the Commonwealth of Virginia in her own right; and having made the investigation required hereby, said commission is authorized and directed to negotiate with the Commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper, to be borne by the State of West Virginia.

"A majority of said commission shall have authority to act. The commission shall choose its chairman and appoint its secretary and other necessary officers.

"The expense properly incurred by the commission and its individual members, including compensation of said members at the rate of ten dollars per day for the time actually

employed, shall be paid by the State out of the moneys appropriated for said purpose.

"The commission shall make a report to the governor as soon as practicable, and upon receipt of said report the governor shall convene the legislature for the consideration of the same.

"The commission is hereby authorized to sit within or without the State and to send for papers and records and to examine witnesses under oath."

3. That pursuant to said joint resolution, the governor of West Virginia did appoint the eleven members of the debt commission therein provided for, and that on a later day the Honorable John W. Mason, of Fairmont, West Virginia, was chosen as the chairman of such commission. That after correspondence between Governor Hatfield, of West Virginia, and Governor Mann, of Virginia, filed herewith as "Exhibit A," the chairmen of the commissions of the two States arranged that the proposed joint conference between the States through their respective commissions, should be held at the New Willard Hotel, in the city of Washington, on the 25th day of July, 1913.

4. That on the day appointed the two commissions did meet in joint conference, and the proceedings of said joint conference, stenographically reported, were as shown in "Exhibit B" herewith filed as a part hereof, for the information of the court.

That said joint conference, after the foregoing proceedings were had, adjourned to meet at the same place on the 12th day of August, 1913. That on the 8th day of August the Honorable John W. Mason, chairman of the West Virginia Commission, notified the Honorable John B. Moon, chairman of the Virginia Debt Commission, by telegraph as follows, viz.:

"Fairmont, W. Va., August 8, 1913.

John B. Moon,

Charlottesville, Virginia.

Certain of our debt commission will not be ready for meeting Tuesday. Members have not had time enough for investigation. We meet at Charleston next Monday and would have to ask that time be extended to a day in the near future. Under these circumstances I suggest Washington meeting be now recalled.

(Signed) John W. Mason.

The notice and agreement for the meeting to be held on the 12th of August was accordingly recalled.

The Commonwealth of Virginia, in view of the recitals and facts herein stated and contained, respectfully moves the court that the cause be speeded so that a final decree may be made therein and this controversy brought to a close.

COMMONWEALTH OF VIRGINIA.

By SAMUEL W. WILLIAMS,

Attorney General of Virginia.

EXHIBIT A.

STATE OF WEST VIRGINIA,
EXECUTIVE DEPARTMENT,
CHARLESTON.

June 10, 1913.

Honorable William Hodges Mann,
Governor of Virginia,
Richmond, Virginia.

Dear Sir: I have the honor to report to you that the regular session of the West Virginia Legislature of 1913 passed House Joint Bill No. 5, raising a commission of citizens of our State to be appointed by the governor, to meet a like commission upon the part of the State of Virginia, to discuss and, if possible, arrive at some mutual agreement looking to the amicable settlement of the Virginia debt dispute now pending in the Supreme Court of the United States, said suit being styled and known on the docket as the *Commonwealth of Virginia* v. *The State of West Virginia*.

A copy of the resolution adopted by the West Virginia Legislature I herewith attach.

The resolution requires the commission to report their findings to a subsequent session of the legislature.

The commission is composed of the following citizens of our State:

Hon. Henry Zilliken, of Wellsburg, county of Brooke.
Hon. John W. Mason, of Fairmont, county of Marion.
Hon. J. A. Lenhart, of Kingwood, county of Preston.
Hon. William T. Ice, of Philippi, county of Barbour.
Hon. U. G. Young, of Buckhannon, county of Upshur.
Hon. Joseph E. Chilton, of Charleston, county of Kanawha.
Hon. R. J. A. Boreman, of Parkersburg, county of Wood.

Hon. John M. Hamilton, of Grantsville, county of Calhoun.

Hon. William D. Ord, of Landgraff, county of MacDowell.

Hon. Joseph S. Miller, of Kenova, county of Wayne.

Hon. W. E. Wells, of Newell, county of Hancock.

The commission met in the governor's reception room on June 10, 1913, and organized by electing the Hon. John W. Mason, of the city of Fairmont, chairman, and the Hon. John T. Harris, of the city of Parkersburg, secretary.

I beg to advise that said commission now awaits the pleasure of the Virginia Commission.

The next regular meeting of the West Virginia Debt Commission will be held in the governor's office on July 22, 1913.

The commission directs me to say to you, and through you to the proper representatives of the Virginia Commission, that they will be pleased to meet the Virginia Commission at any time after July 22, 1913, that the said Virginia Commission may indicate where it would be agreeable to hold a joint meeting of the commissions.

Any communications sent to this office, or to the president or secretary of the West Virginia Commission will receive prompt consideration.

Respectfully yours,

(Signed) H. D. Hatfield,

Governor.

HDH:MP

COMMONWEALTH OF VIRGINIA.

GOVERNOR'S OFFICE.

RICHMOND.

June 20, 1913.

Hon. John B. Moon, Chairman,
Virginia State Debt Commission,
Charlottesville, Virginia.

Dear Colonel: I enclose a communication from the Governor of West Virginia, and a copy of the act of assembly of

that State, adopted on the 21st of February, 1913, which explain themselves. I trust it will be the pleasure of your commission to have an early meeting and to communicate with the commission of West Virginia, to the end that every possible effort may be made on our part to settle the matters in dispute between the two States.

Very truly yours,

(Signed) Wm. Hodges Mann,

Encs. Governor.

EXHIBIT "B"

Proceedings of a Joint Conference

BETWEEN THE

VIRGINIA DEBT COMMISSIONS

OF THE

STATES OF VIRGINIA AND WEST VIRGINIA

HELD AT

THE NEW WILLARD HOTEL

WASHINGTON, D. C.

July 25 and 26 1913

EXHIBIT B.

PROCEEDINGS OF A JOINT CONFERENCE BETWEEN THE VIRGINIA DEBT COMMISSIONS OF THE STATES OF VIRGINIA AND WEST VIRGINIA.

Washington, D. C., July 25, 1913.
New Willard Hotel.

The commissions of Virginia and West Virginia met at 11:30 o'clock A. M., pursuant to notice, Chairman Moon, of Virginia, and Chairman Mason, of West Virginia, presiding.

Chairman Moon: I have been instructed, gentlemen, to present to you, for your consideration, the following resolutions:

Resolved, That it is the sense of this commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt.

2. This commission desiring to carry out in good faith the suggestions made by the Supreme court as to securing an amicable adjustment of the amount of interest which should be paid by West Virginia upon the principal of the debt as ascertained and decided by the court, and realizing that it is not the desire of Virginia nor was it the intention of the Supreme court that Virginia should ask or demand the full or legal amount of interest upon the principal debt as ascertained in the decision of the court, but that there should be concessions made upon both sides, such as comport with justice and the honor and dignity of the two States: and

Whereas, the joint conference to be held to-day between the commissions of Virginia and West Virginia was invited by the authorities of West Virginia, presumably for the purpose of carrying out in good faith the decision and suggestion of the Supreme Court of the United States.

Therefore, be it resolved, That this resolution, together with all other resolutions adopted by this commission at its present session, which may be pertinent, be presented by the chairman of this commission, to the commission of West Virginia at the joint conference to be held to-day, and that the commission of West Virginia be respectfully requested to communicate to this commission, what, in their judgment, would be a fair and just settlement of the interest to be paid by West Virginia upon the principal amount as ascertained in the opinion and decision of the Supreme Court of the United States.

Chairman Mason, of West Virginia: Referring to the resolutions which have just been presented to us on behalf of the commission of Virginia, I would say for the commission of West Virginia that it was not our expectation that this conference was to be confined to the consideration of only the question of interest. Our idea had been that the scope of the conference would be wider, and that we would confer together and take up the whole case, principal and interest. We thought that was what we were to meet here for.

It is my understanding that we, as commissioners, representing the two States, have the power to ascertain what is West Virginia's equitable proportion of the debt, if anything. I thought that was one of the things we were to get at, and try to reach a basis of settlement.

I do not feel that we should be confined solely to the consideration of the one question, namely, the question of interest.

Chairman Moon, of Virginia: I would say, gentlemen,

that Mr. Randolph Harrison has been selected as spokesman for the Virginia commission, to present the matter to you as we view it, and I will now call on Mr. Harrison.

REMARKS OF MR. RANDOLPH HARRISON OF THE VIRGINIA COMMISSION.

Mr. Harrison: Mr. Chairman and gentlemen: The resolutions which have been presented to you for consideration by the chairman of the Virginia commission, contain a statement of what the Virginia commission conceives to be the question to be considered by the two commissions, and an expression of the spirit in which the Virginia commission enters upon this joint conference.

The first resolution declares it to be the sense of the Virginia commission that the subject before the two commissions for consideration and adjustment is, as indicated by the court in its decision, the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of the debt.

The second resolution assumes that the West Virginia commission has invited this conference for the purpose, and with the expectation, if possible, of carrying out in good faith the suggestion of the court in respect to an adjustment of the question of interest, and at the same time states that it is not the purpose of Virginia to exact, nor does this commission believe it to be the intent of the court that Virginia should exact the full amount of interest shown by the record to be due on the share of the principal of the debt ascertained by the court to be West Virginia's.

The Virginia commission enters upon this conference with you in a spirit of absolute frankness, and with the earnest desire to reach an adjustment of this unsettled question. To accomplish this result we recognize that there must be concessions made upon both sides, such as comport with justice and the honor and dignity of the two States. With that end in view we ask the West Virginia commission to advise what,

in their opinion, would be a fair amount for West Virginia to pay in compromise and settlement of the amount of interest due on her share of the principal of the debt.

The chairman of the West Virginia commission has indicated that his commission did not expect this conference to be confined to the consideration of the question of interest alone; that a wider field of inquiry was in contemplation by that commission—a field which would involve a review of the merits of the case, and a determination of the amount of principal, as well as interest which, in the judgment of the West Virginia commission, should be paid by West Virginia.

I will, as briefly as I can, state what we conceive to be the object that the court had in view in suggesting this conference.

In its decision the court used this language: "We have given our decision with respect to the basis of liability, and the share of the principal of the debt of Virginia that West Virginia assumed."

It will be seen, therefore, that the basis of West Virginia's liability, and the share of the principal of the debt for which she is liable, are questions which have been removed from the realm of controversy, or of debate, or of further investigation; they have been judicially settled at the end of several years of litigation.

In this connection it is a pleasure for me to say that West Virginia has had the benefit in this case of able, industrious and zealous counsel, who have not lost an opportunity to present her side of it in the strongest aspect possible. One of these gentlemen I see here to-day, Mr. McClintic. I will venture to say that there is no man connected with this litigation more familiar with its details, and none of West Virginia's counsel has rendered more faithful or efficient service, than he.

You must bear in mind, gentlemen, that when the ground has been covered, as it has been, by able counsel, and the case heard by the highest court in the land, the questions settled

by the decision of that court no longer remain open for dispute or investigation.

Continuing, the court said: "In any event, before we could put our judgment in the form of a final decree, there would be figures to be agreed upon, or to be ascertained by reference to a Master. Among other things there still remains the question of interest."

We have seen that "the basis of liability and the share of the principal of the debt that West Virginia assumed," are decided questions, but there were "other things" to be considered and settled by the court before it could put its judgment "in the form of a final decree," and among these other things is the question of interest, which question the court referred to the two States for adjustment, if an adjustment could be reached, the court stating that if the matter was pressed contentiously it would be referred to the Master, to make such calculations as might be necessary.

It has never been suggested to us before that West Virginia entertained the idea that it would be competent or proper for us to ignore the decision of the court and take jurisdiction of the entire subject matter and enter upon an investigation of the merits of the case.

Two years ago, in advance of the meeting of the West Virginia legislature in extra session, the Virginia commission laid before the governor of West Virginia the decision of the court, and requested that he would ask the legislature to appoint representatives to confer with us in regard to the question of interest, which had been referred to the two States by the court. The matter, however, was not dealt with by the legislature, and at the ensuing term of the court, in October, 1911, Virginia moved the court to speed the cause, on the ground that West Virginia had not indicated any purpose, or intention, to carry out the suggestion of the court. West Virginia, through her counsel, filed an answer to this petition, in which it was not once suggested that there was any misapprehension on the part of Virginia in respect to the ques-

tion to be considered by the two States. But the contention of West Virginia, through her counsel, was that no action should be taken by the court until the legislature of West Virginia had an opportunity in regular session to consider the matter. Therefore, this is the first time, as I have already stated, that the suggestion has been made to any one representing Virginia, that West Virginia contemplated a reopening of the case and a consideration of the whole matter upon its merits. For the reasons that I have stated, gentlemen, the Virginia commission could not consent to this course. We cannot consent to go behind the decision of the court and take up and consider any question which has been decided by the court.

The resolutions which have been presented to you on the part of the Virginia commission embody its views in respect to the scope of this conference, and invite you to communicate to us what, in your opinion, would be a fair basis of settlement of the question of interest. I trust it will be the pleasure of the West Virginia commission to consider the matter in this aspect.

We also recognize the fact that it is competent for the two commissions to consider the question of settlement of the entire controversy, precisely as we might do if there were no other question pending before us, and, if it is the pleasure of the West Virginia commission to take up that question and communicate to the Virginia commission at this conference a proposition looking to a compromise settlement of the whole controversy, we will be glad to receive it, and will give it respectful and fair consideration.

Your chairman has indicated that the West Virginia commission, perhaps a majority of them, are not familiar with the details of this litigation, or the grounds upon which it has proceeded. It may be well enough for me, therefore, to say something in regard to the general subject, inasmuch as you may be viewing it from an angle that you would not view it from, if you were more fully advised.

The questions of West Virginia's liability for a just proportion of this debt, and the amount of that just proportion, were the questions considered by the court. West Virginia denied all liability, and denied the court's right to take jurisdiction of the case, but the court, after elaborate argument, overruled all of her objections. I know it is customary for West Virginians in referring to this case to say that the judgment of the court will amount to nothing, as there is no way of enforcing it. That question was urged before the court by West Virginia's counsel in the argument upon the demurrer, but the court, in referring to this subject in its opinion overruling the demurrer, said: "It is not to be presumed that West Virginia would refuse to carry out the decree of this court. If such repudiation should be absolutely asserted, we can then consider by what means the decree may be enforced."

I think we may safely assume that the court will consider the means of enforcing its decree, if it should ever reach that question, but the court evidently does not consider that result a possibility, as is clearly indicated by the language of the opinion, to the effect that the court will not "presume that West Virginia will refuse to carry out the decree of this court."

It is proper for me to say that no man connected with this litigation on Virginia's side, anticipates that any such stage of the proceedings will ever be reached. There is a power oftentimes more effective than courts to constrain, not only communities, but individuals, to do what is right, namely, the power of public opinion. Speaking for myself I can say that I have never entertained the thought that the State of West Virginia would deliberately repudiate a finding of the Supreme Court of the United States, because I do not believe the sentiment of her people would countenance any such course. Therefore, gentlemen, considerations which involve the repudiation by West Virginia of her liability in this case, have not influenced, and should not influence us in performing the duty now imposed upon us.

I do not think the people of West Virginia understand the nature of the obligation which rests upon them in respect to the liability of their State for a just proportion of this debt. They do not realize that this obligation was assumed in the first step taken towards the formation of the State of West Virginia, and was again assumed in her Constitution, adopted on the 26th of November, 1861, which not only bound the new State to bear a just proportion of the public debt of Virginia, but required her legislature to ascertain the same and provide for its payment. The State of Virginia (the restored State of Virginia) gave its consent by legislative enactment to the creation of the new State of West Virginia "under the provisions set forth in the constitution for the State of West Virginia." Those two instruments were laid before Congress, and on the faith of them Congress gave its consent to the admission of the new State into the Union. The court rests its decision in this case on the ground that West Virginia is bound by a solemn contract to bear a just proportion of this debt—a contract contained in her fundamental law, and to which Virginia and the Congress of the United States assented. The court, in considering that question, and basing her liability upon her solemn constitutional promise, made as a condition to her Statehood, said: "West Virginia must therefore be taken to have *promised* to pay to Virginia her share."

You must understand, gentlemen, that no State can be carved out of an existing State without the consent of the parent State, and in this case the consent of Virginia was given to the division of her territory on condition that West Virginia would bear a just proportion of her debt; and the consent of Congress was based upon the same condition. An eminent citizen of your State, who has wielded there the sceptre of power, made an argument in this case before the Master, in the course of which he took the ground that West Virginia made this promise because she knew she could not be admitted into the Union without it, and that it was made

for the sole purpose of inducing Congress to admit her. In other words, that her promise was made to gain her political existence. The record in this case fully attests the accuracy of the statement that but for West Virginia's promise to assume a just proportion of the debt of Virginia, Congress would never have admitted her into the Union. Senator Sherman so stated in his correspondence with Senator Willey, and Senator Willey, who was an actor in those scenes and participated in the steps which led up to the formation of the State of West Virginia, made the following statement in his correspondence with Senator Sherman (all of which appears in the record): "I say to you now what I have said to the people of West Virginia, that but for that clause in her Constitution the State would never have been admitted. I say further, that in my opinion, no honest man or honest party in West Virginia, or out of it, will deny the obligation of West Virginia to pay an equitable part of the debt of Virginia."

You will hear it said in your State, because it has so often been said to me, gentlemen, "We do not owe any part of the debt because we did not get any of its benefits; none of the money was expended in West Virginia." That question is beside the mark. I will not stop now to consider it. It was settled by the court, and disposed of in the opinion of the court. But when the assertion is made that West Virginia derived no benefit from her promise to pay a just proportion of this debt, it should be remembered that at least she gained her political existence by it; that it was the price paid for Statehood.

Immediately after the war Virginia communicated to West Virginia a resolution, appealing to her to forget the past and to come back and be again a re-united Commonwealth. West Virginia lost no time in replying; she promptly answered that appeal with an emphatic "No." She preferred to remain an independent State, and was satisfied with the price she had paid for that privilege.

Do you think that the people of your State would continue in the belief that they do not owe any part of this debt if they understood these facts? Would they not take a different view of it if they were informed in respect to the basis of the liability of their State? If they understood that West Virginia had passed her word to bear a just proportion of this debt; that Virginia had given her consent to the separation on the faith of that promise, and that Congress, in reliance upon it, had admitted her into the Union, and that she was so well satisfied with the bargain that she refused the mother State's invitation after the war to re-unite with her, can there be any doubt that they would realize the obligation resting upon them, and feel that it was not creditable to keep it in the air, but that it was their duty to meet it like men, and settle it?

I firmly believe, gentlemen, that if men of courage and patriotism would inform the people of West Virginia of the real status of this issue, and of the ground upon which the liability of their State rests, that the majority of them, to say the least of it, would no longer seek to evade, or ignore it as something that did not concern them, but on the contrary they would insist on its being disposed of fairly and honestly. I really believe that their present attitude to the subject is due to the fact that they do not understand that there is a binding obligation upon the conscience of the people of West Virginia to perform her promise.

The court has said that "The liability of West Virginia is a deep-seated equity." Can you go back to your people and encourage in their minds the idea that they are under no obligation to respond to this liability which the court has said is founded in a deep-seated equity? The founders of West Virginia knew it was only just and right that, in dividing the territory of the mother Commonwealth, they should assume a part of the burden of this debt; they knew that they could not, in good conscience, deprive Virginia of a third of her territory and a third of her population and leave

her to carry the burden of debt which they had helped to create. We have the authority of Senator Willey for the statement that the promise made by himself and his associates on behalf of West Virginia, to bear her share of that burden, was made in absolute good faith, and with the full intention of carrying it out. Can it be possible that your people, if they understood these facts, would tolerate any action that would ignore that liability, or temporize with it? Would they not meet the issue like honest men? I believe they would. I am a firm believer in the Jeffersonian faith in the people. I believe that when the people are rightly directed they will do what is right. I believe a majority of them are moved by correct impulses, and that when they go wrong it is because they are ignorant, or misinformed.

I have expressed these general views about this case in the hope that your commission, composed, as it is, of representative men of your State, will be the medium of influencing the people of West Virginia to do what is right in respect to this matter.

The position of West Virginia heretofore, as indicated by her public men, has been that she would not recognize any liability to Virginia for a share of this debt unless that liability was established by the court. Several years ago I had the pleasure of addressing the legislature of West Virginia on this question, with a view to bringing about a friendly adjustment and to avoid the necessity of taking the controversy into court. I urged upon your representatives at that time the propriety of taking action, and the importance of a friendly adjustment of the question. Numbers of your public men said to me at that time that while they recognized that it was important to settle the question, there was no use in talking to the people about it; that they had been educated to believe they did not owe anything, and that the only way to convince them was to let the court say what they owed. That has now been done. The highest court in the land has spoken, and in the light of the opinion of the court it is

not open for any man to say that there is no obligation resting upon West Virginia; nor, in the light of that decision, is it open to any man to question the amount of the principal sum which she is obligated to pay.

The question of interest has been referred to us by the court for adjustment, if possible. We trust it will be your pleasure to take up that question with us and let us see whether it is possible to reach some conclusion that will be honorable to both States. We meet you in a hopeful spirit. No man can have any doubt about our earnest desire to reach a friendly adjustment of this controversy, and we are hopeful that such a body of men as we meet here to-day, will be the efficient instruments of bringing the people of their State to a just appreciation and recognition of her liability in this case.

We can not consent to open up the whole controversy, gentlemen, but we are ready to consider the question of interest. At least we can make an effort to adjust it. If the West Virginia commission desires to communicate to us a proposition to settle the whole controversy we will be glad to take up that question and consider it.

Chairman Mason, of West Virginia: What is the use of doing that, if you will not consider it?

Mr. Harrison: I say we will be glad to consider it.

Chairman Mason: But you say there is no authority to consider any question except that of interest. What is the use then of doing a vain thing?

Mr. Harrison: I hope it would not be a vain thing.

Chairman Mason: According to your statement it would, would it not?

Mr. Harrison: I cannot tell you in advance of a proposition. I say we will be glad to consider a proposition. If you see fit to submit a proposition as to a settlement of the whole controversy we will be glad to receive it. I stated that in the beginning.

I hope the West Virginia commission do not understand

me as indicating it to be the sense of the Virginia commission, that we would not treat with you upon a settlement of the whole debt. We will be glad to do it. If the West Virginia commission has in mind negotiations along that line we will be glad to receive them, and will deal with them in the utmost spirit of frankness.

If that cannot be done; if West Virginia is not prepared to take up that question, then the only question open for us to consider is the question of interest. That is the only question referred to us by the court, as preliminary to further action by the court.

So many years have elapsed since this controversy has been pending that I hope, at least, we will come to some conclusion to-day; that we will either blaze the way to reach some result ourselves, or else make it apparent and clear that can not be done, so that the case may take its due course.

The Master's report contains in detail all of the data relating to the obligations put out by the original State of Virginia, upon which West Virginia is bound, and these are shown in detail, with the interest calculated thereon, in a green-covered pamphlet which is filed as an exhibit before the court. This pamphlet contains a list of all of the bonds taken from the Master's report, with the interest computed thereon, according to their tenor, upon the various bases of settlement that were then under consideration. The record furnishes complete data for the computation of the interest to be borne by West Virginia upon her share of the principal, as fixed by the court. It is not necessary, however, to go into any details about that at this time. The question before the West Virginia commission is the consideration of the two resolutions that we have communicated to them.

REMARKS OF MR. JOHN W. MASON, CHAIRMAN, WEST VIRGINIA COMMISSION.

Mr. Mason: Gentlemen, I want to say just a single word. I regret that the distinguished gentleman has seen fit to discuss the question, which he has, as to what West Virginia would do in case of judgment against us which we thought was a judgment from a court of competent jurisdiction. As to that we may say, as the Supreme Court said, if that contingency ever arises we will meet it, in a spirit that comports with the dignity of a great, loyal and law abiding State. We are not to be forced by any remarks in advance as to what is the equitable proportion, into giving an opinion of what we would do in case there is an adjustment.

Let me say a word as to another matter, if you will indulge a personal allusion. I am one of the men who voted for that constitution. I am one of the men who made that promise. It was my first vote. We made that promise. I, for one, have never had any inclination to, nor never thought of retracting it. But, for fifty years we have been asking, clamoring and demanding, trying in every way we knew how, to get at the question of what is our equitable proportion of that debt. Heretofore it has been newspaper correspondence and ex parte resolutions of legislatures, Virginia enacting such legislation as she saw proper, and West Virginia such legislation as she saw proper. After a while it got into the Supreme Court of the United States.

Now, gentlemen, I understood, and still understand, that it is to some extent at least before the commissioners representing the two States, who have the right and the power to ascertain and to answer the questions which I have been asking for fifty years, namely, what is West Virginia's equitable proportion of that debt, if anything?

I hope, gentlemen, you will not send us back to our constituents, saying we met a body with competent jurisdiction, authorized to answer that question, and you would not do it.

Instead you simply said that you would not discuss a compromise or talk with us but along one line. And we would go back home still with nothing except the finding of a court which, is my judgment, is not conclusive at all upon any subject except possibly the question as to the basis of settlement.

Congressman Flood: I think you entirely misunderstood Mr. Harrison. He distinctly stated at the beginning that the Virginia commission would be glad to receive a communication from you.

Mr. Mason: Yes, but that is as to the resolution, and the only question is the question of interest.

Mr. Harrison: As indicated by the court.

Congressman Flood: Mr. Harrison indicated that the Virginia commission was prepared, in response to some resolution that you might adopt, to go further.

Mr. Mason: Let me say this. If you mean by that, that the West Virginia commission, organized as it is, with only limited advisory power, recently appointed, without having opportunity to go over the question, is to formulate a proposition, not upon the principal, but upon the amounts, as to how the account stands between the two parties, whether we owe you anything or you owe us, and if so how much, of course we would not be prepared to do that at this time.

Chairman Moon, of Virginia: When would you be prepared to render a statement of that kind?

Mr. Mason: My idea, gentlemen, is that this is, to a very large extent, a matter of compromise between the two commissions. We want to meet in that light. We do not want to meet as if still carrying on a lawsuit. We can carry that on any time we want to. But we are here representing the litigants on the two sides, and we can agree, if we can agree at all, on a basis of settlement. And, further, after we know what that is, we may agree upon amounts.

Simply to say now that we will not talk about or discuss anything except the question of interest, why gentlemen, you place us in a very embarrassing position. I am sure you do not want to do that.

Mr. Moon: That is our view of the situation, but we would be glad to receive your counter suggestions, and have you state your views.

Mr. Mason: If you mean by that, gentlemen, to get down to the concrete and say, "West Virginia will pay you so much money," or, "Virginia owes us so much money," as to that we already have had two statements of that account in West Virginia. One statement brings West Virginia out a little in debt. The gentleman who made that statement, the principal man who made that report, was the old auditor of Virginia for eight years. Since that report there is another statement which says you owe us. So if you want to go into the concrete and say how the amount stands, gentlemen, we would ask you for further conference upon the matter. But if you want to insist simply that you are not going to talk about anything else, and consider nothing else but interest, the probabilities are that we could settle that question in a very short time. I hope that will not be the view of this commission.

Mr. Moon: Do you suppose that in thirty days you could formulate a suggestion?

Mr. Wells, (of West Virginia): I was about to make this suggestion, that we adjourn until 2 o'clock, for luncheon; that at that hour the West Virginia commission to meet to formulate its reply to the resolutions offered by the Virginia commission, and that the Virginia commission remain subject to our call, until we are ready to submit our reply.

Mr. Mason: Maybe I ought not to do this; if I ought not, pardon me. Suppose you withdraw this resolution, gentlemen, and let us meet as friends; and see whether or not we can settle this question, whether or not, Mr. Harrison, you can answer the questions that I have been propounding, as you and some other people know, in the last forty years, as to what is West Virginia's equitable proportion of the debt.

Mr. Moon: Our view is that the court has answered that question as to principal.

Mr. Mason: I do not want to take up the technical ques-

tion, that has been settled, especially in view of what the court said upon that subject.

Mr. Harrison: Our view is that the court has answered that vexed question as to the principal.

Mr. Mason: As to the principal?

Mr. Harrison: Yes, as to the principal.

Mr. Mason: The basis, you mean?

Mr. Harrison: Yes, and as to the amount, subject perhaps to any revision of figures that may be necessary. The very tribunal has answered the question which the public men of your State desired should answer it, rather than to have that responsibility upon them.

Mr. Mason: We do not understand the Supreme Court decision or opinion in that light. We do not consider at all that the Supreme Court has settled the amount. It has indicated a basis. It took a different one from yours or ours, either one. You suggested it upon the basis of population, and ours was upon taking the Wheeling ordinance. They said both were wrong, and in their report took the taxable values.

Mr. Harrison: Of course alternative bases were presented to the court.

Mr. Mason: Yes.

Mr. Harrison: But they adopted a basis by which they thought the fairest results would be attained, and on that basis have expressed an opinion as to the amount.

Mr. Mason: Yes, I say that, too.

Mr. Harrison: Now do not misunderstand me, if you please, Mr. Chairman, to indicate that it is the sense of the Virginia commission not to meet you gentlemen in the utmost spirit of frankness and consider the question of settling the whole controversy.

Mr. Mason: Suppose we just simply answer your first resolution no; there probably would be no answer to the second one, because nobody is going to say we want to put ourselves in opposition to the Supreme Court of the United States or any other court.

Mr. Moon: Which do you mean by the first one?

Mr. Mason: The one which says the only question is the matter of interest. That would be easily answered. As to the other, of course, gentlemen, you do not want to put us in that position and have us say we would place ourselves in opposition to the judgment or decree of the Supreme Court of the United States.

Mr. Harrison: Let me make this suggestion. I hope in the response your commission will make to the resolution, that if you think other questions than interest have been referred by the court to the two commissions for consideration, you gentlemen will kindly indicate what they are, in order that we may understand each other.

Mr. Mason: But, Mr. Harrison, we probably would not be ready now to go over and indicate the items which have been omitted. In order to make a settlement upon the basis suggested by the Supreme Court of course there are two things to be considered. One is the taxable value of the property of the two States. And they have omitted the slave property. The other is the actual amount of the debt.

Mr. Harrison: I suggest you put that in the form of a reply.

Mr. Mason: That may not be the only question, gentlemen.

Mr. Moon: I believe the suggestion has been made by Mr. Wells, which I think a wise suggestion, that we take an adjournment now until 2 o'clock and await the pleasure of the West Virginia commission, so far as we are concerned. You can notify us when you are ready to continue the conference.

(Thereupon, at 12:30 o'clock P. M., the joint conference was adjourned, subject to the call of the West Virginia commission.)

Conference Room of the Virginia Commission,
New Willard Hotel, Washington, D. C.,
5 o'clock, P. M.

At 5 o'clock, P. M., Chairman Mason, of the West Virginia commission, appeared before the Virginia commission and presented the following resolutions, which had been adopted by the West Virginia commission in reply to the resolutions presented to it in joint conference:

1. The debt commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the debt commission on the part of the State of Virginia:

"Resolved, That it is the sense of this commission that in the conference to be held this day with the West Virginia commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

In reply thereto says: that in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the joint commission, now in session, should consider.

2. Whereas, the view of the Virginia debt commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme: therefore, be it

Resolved, That the Virginia and West Virginia commissions shall each appoint a sub-committee, respectively, of

three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the chairmen of the two committees; but nothing herein contained shall prejudice the rights of either party.

After consideration of the above resolutions by the Virginia commission, Chairman Moon and the members of the Virginia commission proceeded to the conference room of the West Virginia commission.

Conference Room, West Virginia Commission,
New Willard Hotel, Washington, D. C.,
8 o'clock, P. M.

Chairman Moon, of Virginia: Gentlemen of the West Virginia commission, the Virginia commission has adopted the following resolutions in response to your resolutions of this afternoon:

The Virginia commission, having received the following communications from the West Virginia commission, numbered for convenience 1 and 2:

(1) The debt commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the debt commission on the part of the State of Virginia:

Resolved, That it is the sense of this commission that in the conference to be held this day with the West Virginia commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon

the sum ascertained by the court to be West Virginia's share of the principal of said debt.

In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the joint commission, now in session, should consider.

(2) Whereas, the view of the Virginia debt commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore, be it

Resolved, That the Virginia and West Virginia commissions shall each appoint a sub-committee, respectively, of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the chairmen of the two committees; but nothing herein contained shall prejudice the rights of either party.

Respectfully replies that in its judgment the language of the Supreme Court does not admit of the foregoing construction to the effect that "the interest, if any, is not the only question" which the joint conference should consider.

The court said: "Among other things there still remains the question of interest." The Virginia commission understands this language to mean that there were "other things" to be considered by the court before it reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia commission, being of opinion that there is no ambiguity in the opinion of the court, and that no conference as to any other matter than the question of interest is called for between the two commissions, respectfully adheres to the interpretation of the opinion and decision of the court as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two commissions.

It regrets, however, that the West Virginia commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

The Virginia commission further regrets that the West Virginia commission has not seen fit to indicate or suggest an amount, the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Virginia, as the Virginia commission specifically declared, through Mr. Harrison, that such proposal would receive most careful and respectful consideration, if the West Virginia commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia commission that a sub-committee of three should be formed from each commission, with instructions to consider all matters involved, and so forth, the Virginia commission respectfully says that it is agreeable to the appointment of such sub-committees, provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia.

Provided, further, that said sub-committees be directed to meet on the ..... day of ....., 1913, and report to an adjourned meeting of this joint conference to be held on the ..... day of ....., 1913.

Chairman Moon, of Virginia: I presume it is intended that the meeting of the sub-committees referred to, be held at this place: I do not know.

Chairman Mason, of West Virginia: I take it, gentlemen, that is only a qualified acceptance of the proposition made by us, and that we would want to discuss it further. Whether or not we would want to eliminate from the report to be made by the sub-committees, all questions except the payment of interest, and further, that the proposal of a basis for payment shall come from West Virginia, are questions that we would wish to consider.

I had hoped, gentlemen, you would feel free simply to leave the question open, and that the sub-committee when it met might discuss matters and make such report as it thought proper, insisting, of course, upon your notion about it.

Whether or not we would want to appoint a committee under those restrictions is a matter we would have to think about. I regret very much that you limit it in that way.

Chairman Moon, of Virginia: Would you suggest a separate session of your commission to consider that point?

Chairman Mason, of West Virginia: Yes. I think it will take but a few moments' time.

Chairman Moon, of Virginia: So we will leave you in executive session until you determine what position you will take upon that point.

Chairman Mason, of West Virginia: Yes, I am sorry, gentlemen, you put it in that way.

Conference Room of the Virginia Commission,
New Willard Hotel, Washington, D. C.,
9:30 o'clock, P. M.

Chairman Mason, of the West Virginia commission, appeared before the Virginia commission, and the following occurred:

Chairman Mason, of West Virginia: Gentlemen, the West Virginia commission elects me to report the following:

The West Virginia commission has received the following statement from the Virginia debt commission:

The Virginia commission, having received the following communications from the West Virginia commission, numbered for convenience 1 and 2:

(1) The debt commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the debt commission on the part of the State of Virginia:

"Resolved, That it is the sense of this commission that in the conference to be held this day with the West Virginia commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the joint commission, now in session, should consider.

(2) Whereas, the view of the Virginia debt commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and

for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore, be it

Resolved, That the Virginia and West Virginia commissions shall each appoint a sub-committee, of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the chairmen of the two committees; but nothing herein contained shall prejudice the rights of either party.

Respectfully replies that in its judgment the language of the Supreme Court does not admit of the foregoing construction to the effect that "the interest, if any, is not the only question," which the joint conference should consider.

The court said: "Among other things there still remains the question of interest." The Virginia commission understands this language to mean that there were "other things" to be considered by the court before it reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia commission, being of opinion that there is no ambiguity in the opinion of the court, and that no conference as to any other matter than the question of interest is called for between the two commissions, respectfully adheres to the interpretation of the opinion and decision of the court, as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two commissions.

It regrets, however, that the West Virginia commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

The Virginia commission further regrets that the West Virginia commission has not seen fit to indicate or suggest an amount the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Virginia, as the Virginia commission specifically declared, through Mr. Harrison, that such proposal would receive most careful and respectful consideration, if the West Virginia commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia commission that a sub-committee of three should be formed from each commission, with instructions to consider all matters involved, and so forth, the Virginia commission respectfully says that it is agreeable to the appointment of such sub-committees, provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia.

Provided, further, that said sub-committees be directed to meet on the ..... days of ....., 1913, and report to an adjourned meeting of this joint conference to be held on the ..... day of ....., 1913.

And in reply to the last communication of the Virginia debt commission, the West Virginia debt commission says that it is anxious to proceed with the negotiations but cannot consent to agree in advance that only the question of interest shall be considered, or that the West Virginia sub-committee shall be required to first submit a proposition looking to a settlement. This commission is willing and anxious to ap-

proach a settlement upon equal terms, leaving, in the first instance, all questions of procedure to the said sub-committees.

This committee did not understand the remarks made by Mr. Harrison to-day as a proposition. We considered only the written resolutions presented to us.

In reply to the remarks made by Mr. Harrison at the joint meeting to-day, and referred to in your communication, we would say that this commission does not feel sufficiently acquainted with the questions involved—for reasons heretofore stated—to submit a proposition at this time, and asks that the whole subject matter be submitted to the sub-committees hereinbefore referred to, with the understanding that the said sub-committees be required to report their action for approval to their respective commissions at a time in the near future to be now agreed upon.

Chairman Moon, of Virginia: What do we understand by "the whole matter"?

Chairman Mason, of West Virginia: Interest and all; everything to go to the sub-committee; and let it thresh it out, and let it make its report:

Mr. Harrison, of Virginia: You mean to reopen the whole case and consider the questions *de novo*? That is what you mean by "the whole matter," I suppose.

Chairman Mason, of West Virginia: That is our view. That is, we do not mean to go back to the courts, or to the commissioners; but we would consider among ourselves, that is, the sub-committee, and discuss the whole matter.

Mr. Flood, of Virginia: All other matters, as well as interest?

Chairman Mason, of West Virginia: All other matters, as well as interest; yes, sir. I do not mean, of course, to have this go back to the courts, or the commissioners, necessarily; but so far as we are concerned, in discussing and settling the matter, we want the whole question considered. We are not willing to say in advance that there is no question involved but interest.

Chairman Moon, of Virginia: Do not you misquote us in stating that we ask the proposition in advance? We do not ask it in advance, do we?

Chairman Mason, of West Virginia: No; I say it is not of very much interest who makes the first proposition of settlement, but you say that the sub-committee shall first make the proposition of settlement. Our idea is to leave that question of procedure to the sub-committees. It makes no difference which has the first say or which has the last say. We might make it a low figure, practically nothing, and then simply negotiate. It is our idea of procedure.

Chairman Moon, of Virginia: The impression made on my mind on hearing the resolution read, was that you intended to convey the idea that we required you first to make a proposition for compromise in settlement of the whole matter, to us. Is that what you intend to convey?

Chairman Mason, of West Virginia: Yes; that is the way we understood your second proposition.

Chairman Moon, of Virginia: The second proposition, not the first one.

Chairman Mason, of West Virginia: I say, your number two, in the last proposition.

Mr. Flood, of Virginia: Your objection to our second proposition is that we require first a suggestion of compromise to come from your sub-committee?

Chairman Mason, of West Virginia: Yes. We suggest now that that is a question of procedure and should be left open to the sub-committee; to leave it as a question of procedure.

Chairman Moon, of Virginia: To be entirely frank with you, it seems to me this morning this was made plain, that the court gave the principals, and that we presented the details upon which the interest might be computed, according to rules of interstate or international law, by which an accurate statement could be made up of the interest. That subject we do not expect to be considered, except as a whole.

And we invited some proposition from you gentlemen as to a settlement of the matter, inasmuch as the Supreme Court has discussed the matter and left it open, to a certain extent.

Chairman Mason, of West Virginia: I understand your view is that the Supreme Court has settled the question of amount. We do not look at it alike.

Chairman Moon, of Virginia. No, the amount of the principal.

Chairman Mason, of West Virginia: I say, the amount of the principal. We do not look at it that way. We want the whole matter to be taken up by the sub-committees, to see just what we ought to pay, if anything. Then it will come back to us in that shape. Our committee would not be willing to concede the fact that the only thing to be agreed upon was the question of interest.

Mr. Harrison, of Virginia: You mean, by "the whole subject matter," to reopen the whole case and consider the matters *de novo?*

Chairman Mason, of West Virginia: Yes, sir; that is as far as the commissions are concerned.

(After careful consideration of the above resolutions, a resolution in reply was adopted, and Chairman Moon proceeded to the conference room of the West Virginia commission, where the following occurred:

Conference Room of the West Virginia Commission.
New Willard Hotel, Washington, D. C.,
11:15 o'clock, P. M.

Chairman Moon, of Virginia: The Virginia commission has instructed me to give you the following communication:

The Virginia commission has given careful consideration to the last communication from the West Virginia commission stating in effect that the conference between the two

commissions must embrace a consideration *de novo* of the entire case, both as to principal and interest involved.

The Virginia commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia commission as the basis upon which the conference must proceed.

Chairman Mason, of West Virginia: That being true, are we through?

Chairman Moon, of Virginia: I do not know. You gentlemen can consider that matter. I have no authority to speak for the Virginia commission except to deliver that message. We give that to you for your consideration.

Chairman Mason: We made you a proposition.

Chairman Moon, of Virginia: Yes, I know; but I have no authority beyond that paper.

Chairman Mason, of West Virginia: If you have reached that conclusion, it is not necessary for us to continue our negotiations for the present.

Chairman Moon, of Virginia: That is for you to say.

Chairman Mason, of West Virginia: No, that is not for us. We have said we could not do the other; you say you can not do this.

Chairman Moon, of Virginia: We say that we feel constrained to decline to continue negotiations upon the basis which you propose.

Chairman Mason, of West Virginia: Yes.

Chairman Moon, of Virginia: Now, the question is, what the basis is.

Chairman Mason, of West Virginia: The basis is, as I understand it, that you will insist upon your contention that the only question to be considered is the question of interest.

Chairman Moon, of Virginia: Oh, no. It is all set forth at length in our communications. I am not undertaking to speak for the Virginia commission in this respect.

Chairman Mason, of West Virginia: I do not understand just what shape that leaves us in. If it is simply to stop any further negotiations about it, we might as well do it at one time as another.

Chairman Moon, of Virginia: I did not write that resolution. It was drawn by the members of the Virginia commission, and they have passed it. I have no authority except to deliver it to you for your consideration. We regret very much that negotiations can not proceed on a different basis: that is all.

Chairman Mason, of West Virginia: So do we. But let us remain in session for a few minutes, and we will see whether we will quit, or not.

Chairman Moon, of Virginia: Certainly.

Conference Room of the Virginia Commission.
New Willard Hotel, Washington, D. C.,
12:05 o'clock, Midnight.

Chairman Mason, of the West Virginia commission appeared before the Virginia commission, and presented the following resolution:

The following communication was received from the Virginia commission after 11 o'clock P. M.

The Virginia commission has given careful consideration to the last communication from the West Virginia commission, stating, in effect, that the conference between the two commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia commission as the basis upon which the conference must proceed.

Pending a consideration of the communication Mr. Miller moved that owing to the lateness of the hour at which the communication was received, the further consideration of the same be postponed until to-morrow morning, July 26, 1913, at 10 o'clock and that the West Virginia commission adjourn until that hour.

Which motion was put by the chair and carried by the unanimous vote of the commission, at 12 o'clock midnight.

(In pursuance of the above resolution, further proceedings were adjourned until to-morrow, Saturday, July 26, 1913, at 10 o'clock A. M.)

Saturday, July 26, 1913.
Conference Room of the Virginia Commission.
11:40 o'clock A. M.

Chairman Mason, of West Virginia, appeared before the Virginia commission and presented the following resolution:

The Virginia debt commission on the part of the State of West Virginia received at 11:15 last night the following communication from the Virginia commission:

The Virginia commission has given careful consideration to the last communication from the West Virginia commission, stating, in effect, that the conference between the two commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia commission as the basis upon which the conference must proceed.

In reply to the foregoing communication the West Virginia commission regrets that the Virginia commission has declined to submit the matters in question to a sub-committee,

as heretofore proposed by the West Virginia commission, and the West Virginia commission now suggests that the two commissions have a joint meeting on the ..... day of ....., at ....., for the purpose of further considering a settlement of West Virginia's proportion, if any, of the Virginia debt proper to be borne by the State of West Virginia and to arrive, if possible, at some adjustment thereof.

(The above resolutions were considered by the Virginia commission, a reply adopted, and Chairman Moon proceeded to the conference room of the West Virginia commission to present the same.)

Conference Room of the West Virginia Commission.
New Willard Hotel.
12:30 o'clock, P. M.

Chairman Moon, of Virginia: I am instructed by the Virginia commission to present to you the following communication:

The Virginia commission have considered the suggestion of the West Virginia commission for an adjournment of the conference between the two commissions.

If it is the purpose of the West Virginia commission to insist that the joint conference shall embrace a consideration *de novo* of the entire case, both as to principal and interest involved, then the Virginia commission can perceive no advantage to result from further negotiations. The Virginia commission cannot recede from their views as heretofore announced to the West Virginia commission in respect to the matters to be embraced in the conference between the two commissions.

With this understanding it consents to the adjournment of the conference to Tuesday, August 12, 1913, at 10 o'clock A. M., at the New Willard Hotel, Washington.

Conference Room of the Virginia Commission.
New Willard Hotel.
3:00 o'clock, P. M.

Chairman Mason, of the West Virginia Commission, appeared before the Virginia commission and presented the following resolution:

The West Virginia commission acknowledge receipt of the communication from the Virginia commission concurring in the suggested adjournment upon certain terms and conditions, which terms and conditions the West Virginia commission declines to be bound by. We, however, agree to the time and place of adjournment suggested by you and insist that this adjournment shall be, and is, without terms or conditions and without prejudice to the rights of either party.

(After an informal discussion, the conference at 3:30 o'clock P. M., adjourned to meet on Tuesday, August 12, 1913, at 10 o'clock A. M., at the New Willard Hotel, Washington, D. C.)

Correct:

JOHN B. MOON,
Chairman Virginia Commission.

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FILED.
OCT 7 1913
JAMES H. McKENN
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In the Supreme Court of the United States

No. 2. Original. October Term, 1913.

COMMONWEALTH OF VIRGINIA,

v.

STATE OF WEST VIRGINIA.

In Equity.

MOTION OF THE COMPLAINANT.

SUPPLEMENT TO RECORD.

CLYDE W. SAUNDERS, PRINTER, RICHMOND, VA.

In the Supreme Court of the United States

No. 2. Original. October Term, 1913.

COMMONWEALTH OF VIRGINIA,

v.

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In Equity.

MOTION OF THE COMPLAINANT.

SUPPLEMENT TO RECORD.

The following correspondence having taken place since the preparation of the notice given in this case, which is returnable on the first day of the October term of the court, 1913, is submitted by way of supplement to the record presented in the said notice, to-wit:

(Copy)

FAIRMONT, WEST VIRGINIA,
September 22, 1913.

My Dear Sir:

I am instructed by a sub-committee of the West Virginia commission, appointed by the Governor of that State to negotiate a settlement, in accordance with the suggestions of

the Supreme Court of the United States, of the controversy between the States of Virginia and West Virginia, relative to the settlement of the Virginia debt, to say to you, and through you to the Virginia commission, that the West Virginia commission has in course of preparation a proposition to be presented to your commission at the earliest moment; but that it will yet require some three or four months time in which to put said proposition in final and intelligent form. I cordially endorse the recommendation of the sub-committee and hope it will be agreeable to your commission to consider the same favorably.

In the meantime, if your commission should desire to submit any suggestions or propositions to this commission, looking to the same end, we would gladly and without unnecessary delay, consider the same.

With great respect, I remain,

Yours, etc.,

JOHN W. MASON,
Chairman West Virginia Commission.

HON. J. B. MOON,
Chairman Virginia Debt Commission,
Charlottesville, Virginia.

(Copy)

September 24, 1913.

Judge John W. Mason,
Chairman West Virginia Debt Commission,
Fairmont, West Virginia.

My Dear Sir:

Your favor of the 22d inst., reached me this morning. Last Saturday, the 20th, the Virginia debt commission had a conference with the Attorney General of Virginia, and concluded that under present conditions the only course left open

to us was to press for an order speeding the cause in the Supreme Court, of which the Attorney General of Virginia has, I presume, already notified your Attorney General.

I do not know that this would prevent further negotiations if your commission is in a position to enter into an agreement which would be effective, but no understanding having been reached after you called off our proposed meeting of August 12th, the Virginia commission did not see that there was anything left for them to do except to ask for some final adjudication of any matter which was possibly left open in the last decision of the Supreme Court.

I am sure you will pardon my adverting to the fact that more than two years and a half ago, (March 6th, 1911) the court referred the interest question and any other matter of detailed computation to the two States for their possible agreement and we promptly sent a sub-committee to your State, who returned without being able to accomplish any results.

Our commission therefore felt constrained to ask for some conclusion of the question of interest involved in the controversy and requested our Attorney General to act accordingly, though I do not know that this would preclude an agreement, if one could be arrived at in the premises

Yours very truly,

JOHN B. MOON.

JBM/CP

Respectfully submitted,

SAMUEL W. WILLIAMS,

Attorney General of Virginia.

3

Office Supreme Court, U. S.
FILED.
OCT 8 1913
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States

NO. 2, ORIGINAL.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

v.

STATE OF WEST VIRGINIA, DEFENDANT.

IN EQUITY.

NOTE OF ARGUMENT IN SUPPORT OF COMPLAINANT'S MOTION THAT THE COURT SHALL PROCEED TO ADJUDICATE ALL UNDECIDED QUESTIONS IN THE CAUSE.

J. P. BELL COMPANY, INC., PRINTERS, LYNCHBURG, VIRGINIA

In the Supreme Court of the United States

NO. 2, ORIGINAL.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

v.

STATE OF WEST VIRGINIA, DEFENDANT.

IN EQUITY.

NOTE OF ARGUMENT IN SUPPORT OF COMPLAINANT'S MOTION THAT THE COURT SHALL PROCEED TO ADJUDICATE ALL UNDECIDED QUESTIONS IN THE CAUSE.

The exhibits printed with this motion will inform the Court of the failure of all efforts so far made looking to any adjustment by agreement between the two states of the matters not determined by the decision pronounced on the 6th of March, 1911 (220 U. S., p. 1).

It is pertinent to the present motion to recall that this cause had been already pending in this Court for more than five years when that decision was rendered, and had then been repeatedly and exhaustively argued by counsel, and considered by the Court upon the material issues presented in the pleadings, or evolved in the various stages of the litigation as it progressed; that the defendant was represented all through the litigation by some of the most learned and most resourceful lawyers in America, who made every defense which could be suggested by trained and alert minds fully informed as to the facts of the

case; that the case had been referred to a learned and able Special Master, who, aided by expert accountants, and after months of intelligent and unremitting labor, and after hearing and considering all that counsel for the parties could bring to his attention, had made the findings upon which the Court in large measure based its decision.

The decision thus made settled that West Virginia had assumed and owes an equitable portion of the common debt of undivided Virginia; and it settled the basis and principles upon which the amount of the principal of that debt should be ascertained.

It went further and applying those principles to the figures as computed by the Court ascertained the share of the principal sum due by West Virginia to be $7,182,507.46. *Virginia* v. *West Virginia*, 220 U. S. 1-35.

The Court forbore to decide what was the extent or measure of West Virginia's liability to pay interest upon her equitable share of the common interest-bearing debt of the unsevered Commonwealth.

That question alone was distinctly referred back to the two states for friendly compromise and adjustment between them, if possible.

That question was unquestionably reserved for future consideration and decision by the Court after a reference to the Special Master, in the event that the two litigants should fail or be unable to agree upon terms for its adjustment.

No other question was expressly or distinctly referred back to these litigants by the Court, though there was a reservation, in the opinion of the Court, as to the finality and precise accuracy of the computation by which the Court, applying the principles it approved to the figures it adopted, had reached the mathematical result stated.

Besides the foregoing, it does not appear that there were any controverted questions reserved by the terms of the Court's decision, and the only one of these which was distinctly referred to the two states for adjustment, was that as to West Virginia's liability for interest.

The Commonwealth of Virginia, in obedience to the recommendation of this Court, transmitted a copy of this decision to the Governor of West Virginia on May 2d, 1911, with the request that he would lay it before the Legislature of West Virginia, then soon to assemble, to the end that provision might be made for the conference between the two states as recommended by the Court. No response having been made to this communication, and no action having been taken by any of the constituted authorities of West Virginia with reference to the overtures so made by the Commonwealth of Virginia for the conference above referred to, the Commonwealth of Virginia moved this Court at the October Term, 1911, in accordance with the alternative suggestion made in its decision, to speed the cause by referring it to the Master to make and report such calculations as might be necessary for a final decree. On the 30th of October, 1911, the Court rendered its decision (222 U. S., page 17) on the motion of the complainant to speed the cause, overruling said motion on the ground that "the time had not come for granting it," the Court being of opinion that the authorities of West Virginia should be allowed, if they saw fit, to await the regular session of the Legislature to take action on the Court's recommendation for a joint conference between the two states. But the Court, in extending this indulgence to West Virginia, nevertheless, declared that "a question like the present should be disposed of without undue delay."

The Legislature of West Virginia met in regular session on the ..... day of January, 1913, and on the 21st of February adopted a joint resolution in words and figures following:

CONFERENCE COMMITTEE'S SUBSTITUTE FOR HOUSE SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 5.

(Adopted February 21, 1913.)

Creating a commission, known as the Virginia debt commission, to provide for arranging and settling with the commonwealth

of Virginia the proper proportion of the public debt of the original commonwealth of Virginia, if any should be borne by West Virginia, to take into consideration all matters arising between the commonwealth of Virginia and the state of West Virginia in reference to said original public debt, and to report its proceedings to the governor of the state.

WHEREAS, The commonwealth of Virginia instituted a suit in the supreme court of the United States against the state of West Virginia, to have the state of West Virginia's proportion of the public debt of Virginia as it stood before one thousand eight hundred and sixty-one, ascertained and satisfied; and,

WHEREAS, At the October term, one thousand nine hundred and ten, the supreme court of the United States made a finding that the share of the principal debt of the original commonwealth of Virginia to be borne by the state of West Virginia, was seven million one hundred and eighty-two thousand six hundred and seven dollars and forty-six cents; and,

WHEREAS, Said court did not fully and finally decide the question involved, but suggested that such proceedings and negotiations should be had between the states upon all the questions involved in said litigation, as might lead to a settlement of the same; therefore, be it

Resolved by the Senate of West Virginia, the House of Delegates concurring therein:

That a commission of eleven members, known as the Virginia debt commission, is hereby created. The members of said commission shall be appointed by the governor, two of whom shall be chosen from each congressional district of the state, and one at large, not more than six of whom shall belong to any one political party, and all resignations or vacancies in the said commission as they occur shall be filled by the appointment of the governor.

Said commission is authorized and directed to negotiate with the commonwealth of Virginia, or with any person or committee owning or holding any part of the said indebtedness for a settlement of West Virginia's proportion of the debt of the original commonwealth of Virginia proper, to be borne by the state of West Virginia.

The commission is hereby directed to ascertain and report upon and give the utmost publicity to all the facts in relation to the pending suit instituted against the state of West Virginia

by the commonwealth of Virginia, and to ascertain and report upon and give like publicity to all the facts and conditions under which the West Virginia certificates are held or owned, together with the names and residences of the persons having the legal or equitable right to receive from West Virginia whatever may be ascertained to be payable thereon.

To ascertain and report as to any part of the Virginia debt claimed against the state of West Virginia, which is owned or held or claimed to be due, at law or in equity, by the commonwealth of Virginia in her own right; and having made the investigation required hereby, said commission is authorized and directed to negotiate with the commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original commonwealth of Virginia proper, to be borne by the state of West Virginia.

A majority of said commission shall have authority to act. The commission shall choose its chairman and appoint its secretary and other necessary officers.

The expenses properly incurred by the commission and its individual members, including compensation of said members at the rate of ten dollars per day for the time actually employed, shall be paid by the state out of the moneys appropriated for said purpose.

The commission shall make a report to the governor as soon as practicable, and upon receipt of said report the governor shall convene the legislature for the consideration of the same.

The commission is hereby authorized to sit within or without the state and to send for papers and records, and to examine witnesses under oath.

Pursuant to this resolution the Governor of West Virginia appointed the eleven members of the West Virginia Commission therein provided for, and on the 25th of July the commissions of the two states met in joint conference, and the proceedings of said joint conference, stenographically reported, are filed as Exhibit B with the printed motion of the complainant.

With profound regret we have to show the Court that West Virginia has failed to accede to the suggestions of the Court and the invitations of Virginia, repeatedly made and urged by her representatives, in obedience to the views and suggestions of the Court.

As will be seen from the stenographic report of the conferences and communications between the commissioners of the two states, the West Virginia Commission would agree to no negotiations with Virginia unless, ignoring the decision of this Court and all the vast expenditure of time, labor, and money, which it cost the parties to reach that result, the Virginia Commission would agree that, surrendering the just rights under that decision of Virginia and her creditors represented by her, the whole case, and all the questions which had been, or could be, raised in the case, should be opened up and considered *de novo* just as though no decision had been made by the Court.

The Court will see from the frank and explicit statements made by the Chairman of the West Virginia Commission, speaking for and by authority of that Commission, that the only basis upon which that Commission was willing to negotiate, was that the whole subject matter of the controversy between the two states should be opened up and gone into, by the two commissions *de novo; and that even that should be done without any purpose or power on the part of the West Virginia Commission to settle anything, to determine anything, or bind West Virginia to pay one dollar of either principal or interest.*

This abundantly appears from the record of the joint conferences between the two commissions printed with this motion. (See pages 14, 26, 27, 31, 32, 39, 41, 43, 44, 45, and 46, of motion.)

The Virginia Commission was prepared, and was empowered, with the approval of the Attorney-General of the Commonwealth, to negotiate and to make a compromise settlement with West Virginia, both of the rate and amount of interest to be paid by West Virginia, and of the time and mode of payment of both principal and interest, or to agree a lump sum which West Virginia might pay, in discharge of her entire liability, including principal and interest as of the date of such agreement; and to agree that the terms of any such final

adjustment should be embodied in a consent decree to be entered by this Court in this cause; but they could not with fidelity to the trust devolved upon them, or with due respect for the Court, agree to ignore the decisions of this Court, and all the work done in this case, and embark upon an inquiry which meant nothing but hopeless and indefinite delay. They could not consent to take the case out of the hands of the Court, and refer all questions *de novo* to the decision of the two commissions.

If there were no other insuperable objections to such a course the inevitable delay which such a procedure would involve would be sufficient.

It must be remembered, however, that the West Virginia Commission was not only unwilling to agree to conduct any negotiation which was limited to the question actually referred by this Court back to the two states for adjustment, but was *powerless to make any agreement* which would bind West Virginia in any particular; that they were clothed, in the language of their Chairman, with "only limited advisory power," or powers of inquiry, and could do nothing which would settle anything. Even if the West Virginia Commission should reach a conclusion, and it should be such a result as the Virginia Commission could accept, it would not bind West Virginia. It would settle nothing, but would leave the whole matter to be fought over in the West Virginia Legislature, and before the people of that state on the hustings and at the polls. Nor can we, in this connection, overlook the fact that the people of West Virginia have, for a generation, been taught to believe that West Virginia does not owe, and, whether she owes or not, can not be compelled to pay one dollar of this debt.

If, therefore, the Virginia Commission entered into negotiation with the West Virginia Commission, it must be upon unequal terms, for, while the Virginia Commission could with the concurrence of her Attorney-General commit Virginia, the West Virginia Commission could not bind West Virginia to any proposal, or any terms whatever.

Although any negotiation under such conditions would be unfair to Virginia, yet such was the desire of her representatives to do all in their power to bring about a settlement of this controversy that the Virginia Commission was willing to enter upon a conference with the West Virginia Commission for the purpose of adjusting, if possible, the question of interest, which, under the facts and circumstances of this case, because of West Virginia's delay in making any settlement, constitutes the largest item of Virginia's equitable claim against West Virginia; but the West Virginia Commission declined to enter into any negotiation upon any such basis, and insisted upon the condition that any negotiation should embrace *de novo* the whole question of West Virginia's liability, "if any," principal and interest.

It must be apparent from what transpired between the two commissions that no satisfactory result could have been reached by negotiation, whether it was unlimited in its scope, or limited to the question of interest, and that any efforts along either line would only lead to delay, as anything which the West Virginia Commission might conclude would be merely "advisory," and would have to go back to the Legislature and people of West Virginia.

The West Virginia commissioners were undoubtedly constrained by the terms of the Act from which they derived their existence and their powers.

The terms of that Act are such as:

(1) To give the Commission created under it no powers to even negotiate with the Virginia Commission until there had been compliance with certain remarkable conditions, which could serve no purpose except delay.

(2) To so limit the powers of the Commission, which it created, as to make them merely inquisitorial and to a "limited" extent "advisory," so as to discourage any hope that any adjustment or settlement would ever result from any negotiation

between it and the Virginia Commission, if the latter should be willing to enter into a negotiation upon such unequal terms.

(3) To require that such negotiation should embrace the entire subject matter of the whole original controversy between the two states; namely, in the language of the Resolution of the West Virginia Legislature, the "Settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper, to be borne by West Virginia."

A careful reading of that Act is all that will be needed to show the justice of the foregoing criticism.

The preamble declares that it is the purpose of the Act to create a Commission and provide for arranging and settling the "proper proportion" of the public debt of the original Commonwealth of Virginia, "*if any*, which should be borne by West Virginia," and "to take into consideration *all* matters arising between the Commonwealth of Virginia and the state of West Virginia in reference to said original public debt."

The following paragraphs of said Joint Resolution define the powers of the Commission to be created pursuant to its terms:

> "Said commission is authorized and directed to negotiate with the Commonwealth of Virginia, *or with any person or committee owning or holding any part of the said indebtedness* for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper, to be borne by the State of West Virginia.
>
> "The commission is hereby directed to ascertain and report upon and give the utmost publicity to all facts in relation to the pending suit instituted against the State of West Virginia by the Commonwealth of Virginia, and to ascertain and report upon and give like publicity to all of the facts and conditions under which the West Virginia certificates are held or owned, together with the names and residences of the persons having the legal or equitable right to receive from West Virginia whatever may be ascertained to be payable thereon.
>
> "To ascertain and report as to any part of the Virginia debt claimed against the State of West Virginia, which is

owned or held or claimed to be due, at law or in equity, by the Commonwealth of Virginia in her own right; and having made the investigation required hereby, said commission is authorized and directed to negotiate with the Commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper, to be borne by the State of West Virginia.

"A majority of said commission shall have authority to act. The commission shall choose its chairman and appoint its secretary and other necessary officers.

. . . . . .

"The commission shall make a report to the governor as soon as practicable, and upon the receipt of said report the governor shall convene the legislature for the consideration of the same."

It is manifest that the Commission is given merely inquisitorial and ministerial powers; powers which its distinguished Chairman described, as stated in a former part of this brief, as "advisory," though that definition is hardly justified by the extraordinary language of the Resolution.

It is true the Commission is empowered to "negotiate," but that is as far as they can go. Any proposition for a settlement which might result from such negotiation would not bind anybody (unless, indeed, Virginia, should be bound).

So far as West Virginia is concerned, it would not even have the force or dignity of a *proposal.* It would be merely a suggestion or recommendation from her commission, as to which the only function of the Commission would be to report it to the Governor of West Virginia, who would lay it before the West Virginia Legislature, which he would thereupon convene. It would have neither force not effect unless, and until, it should be approved and adopted by that legislature.

That body, made up of many men of many minds, might approve the Commission's Report *possibly;* or they might make material amendements in it and adopt it as thus modified; or they might repudiate it entirely and appoint another com-

mission to "negotiate"; or, what is not improbable, they might submit it by a referendum to a popular vote.

The Court has said, "the conference suggested by the Court is a conference in the cause—not for an independent compromise out of Court, but an attempt to settle a decree." (*Va. v. W. Va.*, 222 U. S. 17.) The Resolution of the Legislature of West Virginia fails to respond in any particular to this declared purpose of the Court in suggesting this conference. The terms of the Resolution not only prohibit the Commission from consenting to a decree, but from consenting to anything else, and absolutely preclude the hope that any progress can be made towards a settlement of this controversy through the means suggested by the Court.

But perhaps an equally fatal vice in this West Virginia enactment is that by its express terms the Commission it creates is powerless even to "negotiate," until it has done certain other things and ascertained certain facts, some of which it may require months or years to ascertain, if, indeed, they can ever be determined.

It makes no difference that these facts, or their ascertainment, are absolutely irrelevant to any question as to the nature and extent of West Virginia's liability to pay an equitable portion of the principal and interest of the debt. This Resolution is the only power of attorney under which said Commission can act at all, and its functions and powers are absolutely limited by the terms of that Resolution, even though those terms and conditions should be unreasonable and absurd.

If the language of the Resolution means anything, it requires said Commission:

> "(1) To ascertain and report upon and give the utmost publicity to *all facts in relation to the pending suit* instituted against the State of West Virginia by the Commonwealth of Virginia, and to report upon and give like publicity to *all of the facts and conditions* under which the West Virginia certificates *are held and owned*, together with the *names and residences of the persons having a*

> *legal or equitable right to receive from West Virginia whatever may be ascertained to be payable thereon;*" and,
>
> "(2) To ascertain and report as to any part of the Virginia debt claimed against the State of West Virginia, *which is owned by the Commonwealth of Virginia in her own right.*"

And then follows this extraordinary provision:

> ". . . . and *having made the investigation required hereby*, said Commission is authorized and directed to negotiate with the Commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper, to be borne by the State of West Virginia."

It is manifest from this language of the Resolution that the West Virginia Commission is powerless even to negotiate with Virginia, until it has made and completed the investigation directed by the Resolution to be made.

Any negotiation between that Commission and the Virginia Commission was, and will be, *ultra vires* as to the West Virginia Commission, until it has completed said investigation.

It matters not that said investigation can throw no possible light upon the question of West Virginia's liability; or that it is entirely foreign to the purpose of the Court in suggesting this conference; or that it will lead to indefinite delay. *Ita scripta est lex*, which defines the Commission's power to "negotiate," and that requirement must be, to say the least, substantially complied with before the West Virginia Commission could enter upon any negotiation with Virginia for any settlement of West Virginia's share of the debt.

The branch of the investigation, requiring the ascertainment of all the facts in relation to the pending suit, is so vaguely defined in the Resolution, that it is difficult to understand what is meant by it. But *all the facts in regard to that suit*, whatever that may mean and however irrelevant and valueless, must be investigated by the Commission before it can begin to negotiate with Virginia.

The bill and exhibits in the cause show the facts, "under which the West Virginia certificates are held," but the ownership of these certificates is constantly changing, and, in the nature of things, it would be difficult, expensive, and, indeed, impossible to ascertain the "names and residences" of the owners at any given date. This is, therefore, not only an irrelevant, but an impracticable condition precedent, which the West Virginia Resolution requires to be performed before her Commission is authorized to begin negotiations.

The portion of the debt "claimed against the State of West Virginia, which is owned by the Commonwealth of Virginia in her own right," can be ascertained from the records, but that is a matter of no interest to West Virginia, and would be absolutely valueless in determining her liability in this cause. Nevertheless, the West Virginia Resolution makes the investigation of the facts as to Virginia's interest in her own right a condition precedent to any negotiations with Virginia.

These provisions of the Resolution are but added proof of the impossibility of any settlement with West Virginia ever being reached under that enactment.

On behalf of the Virginia Debt Commission, of the counsel for Virginia in this cause and of the Commonwealth whom they represent, we beg to express deep regret that the efforts of Virginia to bring about a settlement with West Virginia, in accordance with the suggestions of the Court, have met with no success. Candor also requires us to say that there is nothing in the situation which justifies the hope that any adjustment will, or can ever, be made between the parties litigant—a condition for which Virginia is in no degree responsible.

In these circumstances, the complainant, the Commonwealth of Virginia, submits that there is no rational ground to hope for any advantage to result from further negotiations, and we respectfully submit that the time has come for the cause to be speeded, and, to that end, we earnestly ask that it may be referred to the Master, with instructions to ascertain and

report forthwith to the Court the amount of interest which the State of West Virginia should be required to pay on the principal sum already ascertained by the Court, and to make such other calculations as may be necessary to a final decree.

Respectfully submitted,

SAMUEL W. WILLIAMS,

Attorney-General of Virginia.

WILLIAM A. ANDERSON,
JOHN B. MOON,
RANDOLPH HARRISON,

Of Counsel for Virginia.

October 6, 1913.

4

Supreme Court, U. S.
FILED.
OCT 8 1913
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No 2, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF FOR THE BONDHOLDING CREDITORS.

HOLMES CONRAD,
SANFORD ROBINSON,
Counsel for the Bondholding Creditors.

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POINT ONE.—THE CASE IN THIS COURT.....Pages 5–7

The case is over seven years old. It has been fully argued in this court three times. It was exhaustively tried before the special master for nearly two years. The accountants for both States agreed upon all the figures. West Virginia was represented by nine able lawyers.

POINT TWO.—THE PROCEEDINGS OF THE TWO COMMISSIONS AT WASHINGTON, JULY 25, 1913..... Pages 8–15

The West Virginia Commission insisted that the decision of the court should be ignored and the case reopened and considered all over again from the beginning. Nine lawyers on West Virginia's behalf have ably defended this case. All the facts have been brought out and exhaustively considered. Due delineation has been had. The case has taken over seven years. Now the West Virginia Commission asks to begin the case all over again.

POINT THREE.—THE EFFORTS OF WEST VIRGINIA TO SETTLE AND DETERMINE THE PROPORTION OF THE DEBT..... Pages 15–21

The only effort ever made by West Virginia was in 1871, when she appointed Commissioners to negotiate with Virginia. Virginia had previously made two such offers to West Virginia, which West Virginia did not accept. Virginia then settled her share with her creditors independently, and offered West Virginia an arbitration. West Virginia declined the arbitration and appointed three commissioners to negotiate with Virginia instead. These commissioners found that West Virginia was indebted to Virginia in the sum of $953,360.25. The West Virginia legislature repudiated this finding, and the senate finance committee of 1873 made a report on the debt, which found Virginia to be $525,000 in debt to West Virginia. West Virginia has declined all offers to settle since then and has repeatedly denied all liability.

POINT FOUR.—THE EFFORTS OF VIRGINIA TO SETTLE THE CONTROVERSY AND WEST VIRGINIA'S EXCUSES FOR FAILURE TO MEET VIRGINIA ..... Pages 22–31

Virginia has made six offers to West Virginia to settle this controversy, and West Virginia has declined them all. West Virginia declined Virginia's first offer to negotiate, because of the then pending suit over Berkeley and Jefferson. She declined Virginia's offer of arbitration, because she preferred negotiations through commissioners. When Virginia again offered her this method she declined to treat at all, and said that she owed no part of the debt.

POINT FIVE.—WEST VIRGINIA IS LIABLE FOR INTEREST.... Pages 31–40

West Virginia is liable for interest upon her proportion of the bonds outstanding on January 1, 1861, according to their tenor, by the express terms of her contract contained in section 8 of Article VIII of the Constitution under which she was admitted as a State. This promise in her Constitution was merely the express acknowledgment of an already existing equity arising out of her act of separation from Virginia. This is a Virginia contract, and under the law of Virginia and West Virginia as well West Virginia is liable for interest from January 1, 1861, to date upon the whole of her share. We do not ask so much, but only that she pay the interest to maturity upon her share of the outstanding bonds.

POINT SIX.—THE AMOUNT OF INTEREST WEST VIRGINIA OWES IS $14,055,962.56 ..... Pages 40–49

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Paragraph XI of the answer of West Virginia.

SCHEDULE III ..... Pages 109–119

Pages 12-20, inclusive, of West Virginia's brief upon the hearing on the merits upon the report of the special master.

SCHEDULE IV ..... Pages 120–125

Calculation of the amount of interest West Virginia owes upon her share of the outstanding bonds, according to their tenor.

SCHEDULE V ..... Pages 125–129

Calculation of the amounts West Virginia would pay on the various bases discussed in point seven.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 2, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF FOR THE BONDHOLDING CREDITORS.

This motion seeks to have the court determine the questions left open in the opinion of the court delivered herein by Mr. Justice Holmes on March 6, 1911, and to have the court enter a final decree.

The concluding paragraph of the opinion begins as follows:

> "We have given our decision with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed. In any event, before we could put our judgment in the form of a

> final decree there would be figures to be agreed upon or to be ascertained by reference to a master. Among other things there still remains the question of interest. Whether any interest is due, and if due from what time it should be allowed and at what rate it should be computed, are matters as to which there is a serious controversy in the record, and concerning which there is room for a wide divergence of opinion. There are many elements to be taken into account on the one side and on the other. The circumstances of the asserted default and the conditions surrounding the failure earlier to procure a determination of the principal sum payable, including the question of laches as to either party, would require to be considered. A long time has elapsed. Wherever the responsibility for the delay might ultimately be placed, or however it might be shared, it would be a severe result to capitalize charges for half a century—such a thing hardly could happen in a private case analogous to this."

In the following pages we shall try to show the court that West Virginia is liable for interest, and that the time for which she is liable for interest and the rate at which it should be computed are matters as to which there is no controversy in the record. All the facts bearing upon the question of the amount of interest for which West Virginia is liable are contained in paragraph 1 of the master's report and are acquiesced in by West Virginia. All the facts bearing upon the circumstances of West Virginia's default and the conditions sur-

rounding the failure earlier to procure a determination of the principal sum payable, including the question of laches as to either party are admitted by West Virginia, and we shall rely exclusively on West Virginia's admissions in discussing this portion of the case. The result which we reach does not attempt to capitalize charges for half a century, but merely imposes interest according to the tenor of the bonds up to their maturity. We do not ask as much from West Virginia in the way of the performance of her promise to pay her share as Virginia has already done in regard to her proportion. Further delay is useless.

At the recent meeting of the two States at Washington on July 25, 1913, the proposition of Chairman Mason, of the West Virginia Commission, to the Virginia Commission was as follows:

> "It makes no difference which has the first say or which has the last say. We might make it a low figure, practically nothing, and then simply negotiate. It is our idea of procedure" (p. 40).

The first governor of West Virginia in his first message to the first legislature of that State said.

> "The Constitution provides that this State shall assume an equitable proportion of the debt of Virginia, prior to the first day of January, 1861, but no settlement can be made at present, and when it is made our 'equitable proportion' cannot be much" (W. Va. Brief, Jan., 1911, p. 12).

West Virginia's position in regard to the payment of her proportion of the debt is now as it was at the first meeting of her legislature and ever since has been—*not now, but later, and not much then.*

We shall present this subject of vital importance to the bondholding creditors of Virginia, located as they are throughout the world, and waiting over 50 years for realization upon this portion of their property under the following headings: *The Case in This Court; The Proceedings of the Two Commissions at Washington, July* 25, 1913; *The Efforts of West Virginia to Determine and Settle Her Proportion of the Debt; The Efforts of Virginia to Settle the Controversy and West Virginia's Excuses for Failure to Meet Virginia; West Virginia is Liable for Interest; The Amount of Interest Which West Virginia Legally Owes is* $14,055,962.56; *If West Virginia Should Pay Principal and Interest upon Her Proportion of the Debt in the Same Pro Rata Amount Which Virginia Has Paid upon Her Proportion, or if West Virginia Should Scale Both Principal and Interest in the Same Way that the Various Funding Acts of Virginia Provided, or if West Virginia Should Pay Interest for* 34 *Years, as Provided in Her Constitution, the Amount Would be More than the Amount We Ask for.*

Before proceeding to discuss the various points outlined above we wish very respectfully, but very

emphatically, to call the attention of the court to the fact that there is no controversy in the record about the facts which determine the question of interest nor the facts bearing upon the circumstances of the default, the failure earlier to procure a determination of the principal sum payable or the question of laches. These facts are all either admitted by West Virginia or found by the master in his report and acquiesced in by West Virginia. The only question in the case anywhere is as to the legal effect of the already admitted and determined facts.

Point One.

The Case in This Court.

The bill in this suit was filed on leave of the court in February of 1906. The defendant filed a demurrer and later an amended demurrer, and after full argument in March of 1907 Mr. Chief Justice Fuller delivered the unanimous opinion of the court overruling the demurrer. West Virginia filed her answer. The case was again fully argued before this court and on May 4, 1908, a decree was entered referring the cause to a master. West Virginia afterwards asked that the decree of reference be modified in several particulars, and the court acceded to her request in one respect and later on, June 1, 1908, appointed Hon. Charles E.

Littlefield as special master under the decree. He proceeded to take the evidence of the parties at Richmond, Va., between Nov. 16, 1909, and July 2, 1909, and afterwards the parties agreed upon substantially all the accounts taken under the various paragraphs of the decree as appears from the joint exhibits of the parties, all signed by their respective accountants. After that the case was very fully argued before the master in New York city in November and December, 1909, and on March 17, 1910, the master made his report. The case was not heard before this court upon the master's report until January, 1911, and on March 6, 1911, Mr. Justice Holmes delivered the opinion of the court, in which the court gave its decision in respect to the basis of liability and the share of the principal debt of Virginia that West Virginia assumed, but left open among other things the question of interest. Virginia at once sought a conference with West Virginia to determine the question of interest; but West Virginia, although abundant time remained for her governor to insert this matter in a supplementary call to her legislature, which had already been called to meet in special session, declined to take the matter up with Virginia at this time. Thereupon Virginia moved this court on October 9, 1911, to determine the questions left open in the opinion of March 6, 1911, and to enter a final decree. The court denied this application (222 U. S., 17). After the failure of the commissions of the two States to reach any result

at their joint meeting in Washington on July 25, 1913, Virginia again asks this court to proceed with the determination of the questions left open and to enter a final decree. The case is now over 7 years old and the controversy is over 50 years old. There has been no surprise. The case has been fully argued on the demurrer and again on the application to appoint a master and a third time upon the master's report, after taking testimony for a period covering nearly two years, and after both States had agreed upon, and their respective accountants had signed joint accounts under, each paragraph of the decree.

West Virginia has been represented in this case by Hon. John G. Carlisle, Hon. John C. Spooner, ex-Governor Dawson, Prof. Chas. E. Hogg, Mr. W. Mollohan, Mr. Geo. W. McClintic, Mr. W. S. Matthews, and by three Attorney Generals.

West Virginia has had two years and a half to consider the instructions of this court in regard to a joint conference to settle the question of interest. Her proposition at that conference was to begin the discussion of her liability all over again just as if the suit had not been brought and earnestly defended by her for seven years.

> "We might make it a low figure, practically nothing, and then simply negotiate. It is our idea of procedure" (p. 40).

This is the proposition of the West Virginia chairman at Washington.

Point Two.

The Proceedings of the Two Commissions at Washington, July 25, 1913.

The West Virginia legislature at its last regular session adopted a joint resolution on February 21, 1913, which, after reciting that this court had made a finding in this suit that the share of the principal debt of the original Commonwealth of Virginia to be borne by the State of West Virginia was $7,182,607.46, recited further that this court did not fully and finally decide the question involved, but suggested that such proceedings and negotiations should be had between the two States upon all the questions involved in said litigation as might lead to a settlement of the same, and then resolved that a commission of 11 members should be appointed by the governor, which commission was authorized and directed to negotiate with Virginia or her bondholding creditors or their committee and report to the governor, and upon receipt of the report the governor should again convene the legislature for consideration of the same. The governor appointed a commission of 11 members. Hon. John W. Mason, of Fairmont, Va., was chosen as chairman of the commission. The commissions, after correspondence between the governors of the two States, met at Washington on July 25, 1913, but Virginia was unwilling to meet

West Virginia's proposal and West Virginia was unwilling to meet Virginia's proposal, and so on July 26, 1913, the meeting adjourned to meet again at the same place on August 12, 1913. Before this meeting was held, however, it was called off by West Virginia, and no subsequent meeting has since been held.

Virginia took the position at the meeting that, except for arithmetical errors in calculations, the basis of liability of the share of the principal of the debt of Virginia that West Virginia assumed was determined by this court in its decision of March 6, 1911, and she therefore refused to treat with West Virginia in regard to the amount of principal which West Virginia owed. Virginia offered, however, to discuss the question of interest with West Virginia and expressed her willingness to consider any proposition which West Virginia might care to make, either in settlement of the interest or in settlement of the whole debt, principal as well as interest. West Virginia, on the other hand, declined to make any proposition, either in settlement of the interest or of the whole debt, principal and interest, and she insisted upon going into the whole question anew from the beginning just as if this question had not been litigated for the last seven years. The position taken by West Virginia at the joint conference is clearly shown from the following quotations taken from the remarks of Chairman Mason, of West Virginia:

"Chairman MASON, of West Virginia: Referring to the resolutions which have just been presented to us on behalf of the Commission of Virginia, I would say for the Commission of West Virginia that it was not our expectation that this conference was to be confined to the consideration of only the question of interest. Our idea had been that the scope of the conference would be wider, and that we would confer together and take up the whole case, principal and interest. We thought that was what we were to meet here for.

"It is my understanding that we, as commissioners representing the two States, have the power to ascertain what is West Virginia's equitable proportion of the debt, if anything" (p. 14).

* * * * * * *

"Let me say a word as to another matter, if you will indulge a personal allusion. I am one of the men who voted for that Constitution. I am one of the men who made that promise. It was my first vote. We made that promise. I, for one, have never had any inclination to, nor never thought of retracting it. But, for fifty years we have been asking, clamoring and demanding, trying in every way we knew how to get at the question of what is our equitable proportion of that debt" (p. 26).

* * * * * * *

"Mr. MASON: If you mean by that, gentlemen, to get down to the concrete and say 'West Virginia will pay you so much money' or, 'Virginia owes us so much money?' as to that we already have had two statements of that account in West Vir-

ginia. One statement brings West Virginia out a little in debt. The gentlemen who made that statement, the principal man who made that report, was the old auditor of Virginia for eight years. Since that report there is another statement which says you owe us" (p. 28).

* * * * * * *

"Chairman MOON, of Virginia: What do we understand by 'the whole matter'?

"Chairman MASON, of West Virginia: Interest and all; everything to go to the subcommittee; and let it thresh it out, and let it make its report.

"Mr. HARRISON, of Virginia: You mean to reopen the whole case and consider the questions *de novo*. That is what you mean by 'the whole matter,' I suppose?

"Chairman MASON, of West Virginia: That is our view" (p. 39).

* * * * * * *

"We might make it a low figure, practically nothing, and then simply negotiate. It is our idea of procedure" (p. 40).

* * * * * * *

"Chairman MASON, of West Virginia: I say, the amount of the principal. We do not look at it that way. We want the whole matter to be taken up by the subcommittees, to see just what we ought to pay, if anything" (p. 41).

* * * * * * *

"Mr. HARRISON, of Virginia: You mean, by 'the whole subject-matter,' to reopen the whole case and consider the matters *de novo*.

"Chairman MASON, of West Virginia: Yes sir, that is as far as the commissions are concerned" (p. 41).

From the foregoing it appears that West Virginia was not prepared to make or receive any proposition in settlement of the interest due or in settlement of the amount due, principal and interest, and was only willing to deal with Virginia upon the basis that the whole controversy should open anew from the beginning and all the proceedings in this case should go for nothing.

The attitude taken by West Virginia at the joint conference is not a new one. Her position, as stated by her chairman, is as follows:

> "We might make it a low figure, practically nothing, and then simply negotiate. It is our idea of procedure."

West Virginia's brief, upon the final hearing of this case after the master's report, at page 12 contains the quotation from the first governor of West Virginia in his first message to the first legislature of that State, which we also have quoted above. The governor said:

> "No settlement can be made at present, and when it is made our 'equitable proportion' cannot be much."

A West Virginia committee, appointed in 1871, reported that West Virginia's share of the debt was $953,360.23, but her legislature was unwilling to bind the State for even this modest amount of liability and repudiated the report. The Senate Finance Committee of 1873 made a report instead,

in which Virginia was found indebted to West Virginia in the sum of $525,000. These were the two reports on the debt to which Chairman Mason referred in his remarks quoted above.

Each legislature of West Virginia, from 1895 to 1905, inclusive, resolved that West Virginia owed nothing on account of the debt. Most of the resolutions added that West Virginia was unalterably opposed to any negotiations on the subject. We shall discuss these matters more particularly in our next point, but have referred to them here for the purpose of showing that the position assumed by West Virginia at the joint conference was not a new position, but the attitude she has taken throughout whenever the question of her liability for this debt has been called to her attention.

The West Virginia view,

> "No settlement can be made at present, and when it is made our 'equitable proportion' cannot be much,"

is as old as West Virginia herself. It is older. This conception of liability in West Virginia antedates the birth of the State itself. As long ago as the Constitutional Convention of Virginia of 1829-30, Mr. Alexander Campbell, remarking about it, measured West Virginia's liability in terms which have since become the Wheeling ordinance and which were intended to make West Virginia's share of the debt as remote, as shadowy, and as small as calculation could make it.

West Virginia is wrong about the question of the debt. She has told herself so many times that she does not owe anything that she has come to believe that she does not owe anything. Few of her citizens have yet had the courage to tell West Virginia the truth. When this court finally fixes the amount due from West Virginia and enters its decree to that effect we all know that the good people of West Virginia will at once proceed to comply with the conditions of the decree.

As long ago as 1873 West Virginia recognized the right of Virginia to determine this question in this court (Report of the Senate Finance Committee of 1873, W. Va. Comp., vol. 1, p. 491).

Hon. John W. Mason, the present chairman of the West Virginia Commission, in a letter dated May 29, 1908, to Governor Dawson, of West Virginia, in regard to the debt, wrote in part as follows:

> "We hear much talk about compromise and settlement out of court. All lawsuits arising out of controversies of this character are simply involuntary arbitration, and I know of no body of men to whom this controversy can be submitted with such confident assurance that it will be fairly, properly and justly settled, as to the Supreme Court of the United States" (W. Va. Comp., vol. 2, p. 383).

It is obvious from the foregoing that the ideas of the people of Virginia and West Virginia are radically different about the amount which West

Virginia should pay to the old creditors of Virginia, and that no amount of mere time will bring them any nearer in their views. The attitude of West Virginia today is the attitude of West Virginia 47 years ago, and the attitude of the people who then lived in the present boundaries of Virginia 80 years ago.

Point Three.

The Efforts of West Virginia to Settle and Determine Her Proportion of the Debt.

All the facts bearing upon this point of our brief are admitted by West Virginia. These admissions are contained in the Appendix of the West Virginia Compilation, vol. 1, pp. 444-472, inclusive, and 490-496, inclusive, in paragraph XI of her answer, and in pages 12-20, inclusive, of West Virginia's Brief on the final hearing of this case after the master's report. The extracts from West Virginia's Appendix and Answer and Brief are printed at the end of this brief as Schedules 1, 2, and 3.

From these admissions by West Virginia it appears that the first effort made by West Virginia to determine her proportion of the debt was the appointment of a committee of three men, known as the West Virginia Debt Commissioners of 1871. The resolutions of the West Virginia Legislature,

upon which the then Governor Jacobs appointed Messrs. Bennett, Cambell, and Jackson as commissioners, are found at pages 453-454 of the West Virginia Compilation, vol. 1, and their report appears on pages 457-489. It appears therefrom and from the proceedings as stated in the appendix that Virginia on several occasions prior to 1871 tried to induce West Virginia to appoint commissioners to treat directly with her commissioners, and that West Virginia having always refused to do so the Virginia legislature, on February 11, 1871, adopted resolutions providing for the settlement of the controversy by arbitration. Owing to the fact that Virginia had provided for the settlement of the controversy by arbitration, the Governor of Virginia declined to appoint commissioners to treat with West Virginia, but these commissioners of West Virginia proceeded to Richmond on an independent *ex parte* investigation of their own, and they found West Virginia's share of the Virginia debt to be $953,360.28. These commissioners felt themselves aggrieved because of the letter they received from the Second Auditor of Virginia, and because of a reference to West Virginia's attitude contained in Governor Walker's message to the General Assembly of Virginia at the time. This letter of the Second Auditor and this extract from the message of the then Governor of Virginia have ever since been used by West Virginia as excuses for her subsequent conduct. We quote them here:

"In reply to the foregoing communication we received the following note at 5 o'clock on the evening of the 16th of November, after a lapse of two and a half days, and after we had abandoned all hope of the assistance asked for in our letter, and after, in fact, we were on the eve of our departure for home:

"SECOND AUDITOR'S OFFICE,
"RICHMOND, *Nov.* 16, 1871.

"A. W. CAMBELL, Esq.,
Secretary, &c.

"DEAR SIR: Yours of the 14th was received. You ask me for a report upon a variety of questions connected with our public debt, the transactions of the Board of Public Works in regard to it, and the financial affairs of the State, which it is understood of course you propose to use in the contemplated adjustment of the portion to be paid by West Virginia of the debt.

"To answer the questions propounded would involve an amount of labor which we could not bestow on the subject.

"But, apart from this, I presume at an early day this office will be called upon by the Executive or the General Assembly of Virginia for detailed reports of all the matters referred to, which will be available to you.

"The books and records of this office are open to your inspection.

"I trust that in failing to respond to your inquiries you will not regard me as in any wise wanting in official courtesy to you or

your associates. None, certainly, is intended.

"I have the honor to be,

"Most respectfully yours,

"ASA ROGERS."

* * * * * * *

"Now, if the authorities of West Virginia entertained an earnest desire to make a speedy and final settlement of this matter, why did they not accept our tender of arbitration? A mode of settlement of such controversies universally recognized by both nations and individuals as right and appropriate. Suppose an equal number of Commissioners appointed by each State, and that they should meet and disagree upon any or all points involved, who is to decide between them? And yet, beyond a doubt, they would radically disagree upon the first or chief point to be settled, viz: the basis or principle upon which the settlement should be made. But, suppose that the Commissioners should finally agree, does any one suppose that their finding would be ratified by the legislatures of the two States, disagreeing as the people do radically upon the merits of the question at issue? Of course not" (W. Va. Comp., vol. 1, pp. 461, 462, 463).

It must be borne in mind that Virginia had offered in 1867 and again in 1870 to settle directly with West Virginia her proportion of the debt through Commissioners and that West Virginia having declined both offers, Virginia had gone ahead and settled her proportion of the debt with

her creditors on a basis satisfactory to the creditors and had proposed arbitration to West Virginia. What genuine exception can be taken to the letter of the Second Auditor or to this extract from Governor Walker's message. The letter was fair and the message was true.

The West Virginia Commissioners criticized Virginia for settling with her creditors without West Virginia; for fixing her share at two-thirds, and for compounding interest on the debt. They criticized Virginia for paying only two-thirds of her debt as too small a proportion and then for compounding the interest as making that proportion too large (W. Va. Comp., p. 464). In paragraph XII of her answer, West Virginia again makes the same complaint.

It seems to us a praiseworthy instead of a blameworthy thing, that Virginia so early settled with her creditors upon a basis satisfactory to them, and if Virginia compounded the interest in a high sense of her obligation to her creditors it is all the more praiseworthy. Certainly her creditors much preferred Virginia settling with them in 1871 to an indefinite postponement until such time as West Virginia should join in the settlement.

The Senate Finance Committee of West Virginia made a report in 1873, to which we have already alluded, finding Virginia indebted to West Virginia in the sum of $525,000.00. This report pointed out to Virginia that she could sue West Virginia in the Supreme Court of the United

States. When Virginia adopted that process as the only way left to her to obtain a settlement of this controversy, West Virginia shifted her position again and disputed the jurisdiction of the court. After 1873 West Virginia took no notice of her proportion of the debt until the meeting of her legislature in 1895.

That Legislature of West Virginia resolved that it declined to enter into any negotiations with the debt commission appointed by Virginia in 1894 to settle the Virginia debt, and since then each successive Legislature of West Virginia down to and including the session of 1905, just prior to the beginning of this suit has resolved that West Virginia owes no part of the Virginia debt, and that her legislature is opposed to any negotiations in regard thereto (W. Va. Comp., vol. 1, pp. 494, 495).

Chairman Mason, in his remarks at the joint conference at Washington, said as quoted above:

> "But, for fifty years we have been asking, clamoring, and demanding, trying in every way we knew how, to get at the question of what is our equitable proportion of that debt" (p. 26).

In the ten years from 1895 to 1905 each West Virginia Legislature resolved that she owed no part of the debt and was opposed to any negotiations on the subject.

In the twenty-two years from 1873 to 1895, West Virginia was silent. Prior to 1871 she refused to

meet Virginia, using as an excuse the pendency of the suit in this court, brought by Virginia to recover the counties of Berkeley and Jefferson.

In 1871 West Virginia did appoint commissioners, but the finding of this commission that West Virginia owed less than $1,000,000, was repudiated at once, and in 1873 the Senate Finance Committee reported that Virginia was indebted to West Virginia in the sum of $525,000. This report was made an exhibit in West Virginia's answer. The letter of the Second Auditor of Virginia, and the extract from message of Governor Walker to Virginia are given as excuses for the subsequent conduct of West Virginia. We have laid them both before the court to see if it finds in either of them an excuse for West Virginia's course.

We have now given all the efforts made by West Virginia from her beginning to the present time to procure a determination of her share of the debt. We do not find anything therein to excuse West Virginia from liability for the amount of interest which we shall later on in the brief show she legally owes.

Point Four.

The Efforts of Virginia to Settle the Controversy and West Virginia's Excuses for Failure to Meet Virginia.

West Virginia's admission of the facts bearing upon this portion of our argument are contained in the same papers to which we referred in our previous point and are pages 444-472, inclusive, and 490-496, inclusive, of West Virginia's Appendix to the West Virginia's Compilation, vol. I, and paragraph XI of her Answer, and pages 12-20, inclusive, of her Brief upon the hearing after the Master's report. They are printed at the back of this brief as Schedules 1, 2, and 3.

During a period of forty-five years, from January 20, 1867, down to May 2, 1911, repeated efforts were made by Virginia to induce West Virginia to enter upon a settlement, all of which were without avail. Six conspicuous efforts on the part of Virginia to bring about a settlement may be more particularly referred to.

These six efforts were as follows:

Governor F. H. Pierpont, of Virginia, sent a communication to Governor Arthur I. Boreman, of West Virginia, dated January 20, 1867, together with a joint resolution adopted by the General Assembly of Virginia on February 28, 1866, in reference to the reunion of the States of Vir-

ginia and West Virginia and the adjustment of the public debt, and appointing Mr. A. H. H. Stewart, Mr. William Martin, and Mr. John Janny as commissioners to proceed to the seat of government of West Virginia, and giving them authority to treat with the authorities of West Virginia on both subjects.

On February 28, 1867, the Legislature of West Virginia adopted a joint resolution declining to entertain any proposition looking to a reunion of the States, and refusing to treat with the Commissioners of Virginia upon the adjustment of the public debt of Virginia until the suit of Virginia against West Virginia to recover jurisdiction over the counties of Berkeley and Jefferson had been finally disposed of (W. Va. Comp., vol. I, pp. 444-445).

Governor Gilbert C. Walker, of Virginia, sent another communication to Governor William E. Stephenson, of West Virginia, in February, 1870, endeavoring to adjust the Virginia public debt with the State of West Virginia, and about the same time Messrs. William J. Robertson, W. T. Sutherlin, and P. H. Aylett, commissioners, appointed on the part of Virginia, also sent a communication to Governor Stephenson. The first communication was transmitted by Governor Stephenson to the West Virginia Legislature on February 24, 1870, and the second communication was so transmitted on February 28, 1870.

It appears from the joint resolution adopted by

the Legislature of West Virginia after the receipt of Governor Stephenson's communication that the Virginia commissioners were then present in the city of Wheeling for the purpose of adjusting the public debt. The West Virginia Legislature appointed a committee to confer with the Virginia commissioners and report to the legislature, but as far as the journals of the House and Senate of West Virginia of the session of 1870 show no report was made by this committee (W. Va. Comp., vol. I, pp. 446-447).

The defendant's answer states that afterwards, on March 3, 1870, the Governor of West Virginia was authorized by the legislature to appoint three resident citizens of the State to treat with the authorities of Virginia upon the subject of the proper adjustment of the public debt of that State, but as there was an omission to make an appropriation to pay the expenses of West Virginia's commissioners, and the resolution authorizing their appointment was passed on the last day of the session of the legislature, the Governor of West Virginia stated in his message of 1871 that no appointment had been made owing to the lack of funds to pay the expenses of such commission (Record, pp. 151, 152).

On February 17, 1871, Governor Walker, of Virginia, sent another written communication to Governor Stephenson, of West Virginia, offering to adjust West Virginia's proportion of the public debt of Virginia by arbitration in accordance

with a joint resolution of the General Assembly of Virginia approved on February 11, 1871 (W. Va. Comp., vol. 1, pp. 449-451), but West Virginia declined this offer (W. Va. Comp., pp. 452-454).

In February, 1895, Governor O'Farrell, of Virginia, communicated to Governor McKorkle, of West Virginia, a copy of the resolution adopted by Virginia March 6, 1894, appointing commissioners for the purpose of negotiating with West Virginia for the payment of the proportion of the Virginia public debt to be borne by West Virginia, but no response was ever made by West Virginia, although her legislature declined to negotiate with Virginia (W. Va. Comp., pp. 76 and 494).

On February 1, 1905, Mr. Randolph Harrison on behalf of the Virginia Debt Commission, addressed the joint committees on finance of the West Virginia Legislature in relation to West Virginia's contributive share of the debt of Virginia (W. Va. Comp., pp. 68-82), and as West Virginia was still unwilling to treat with Virginia this suit was begun. The last attempt of Virginia to treat with West Virginia is set forth in the motion papers on the motion of October 9, 1911, herein to proceed with the determination of the suit.

The only effort made by West Virginia at any time to settle this debt was made through a committee consisting of Messrs. John J. Jackson, J. M. Bennett, and A. W. Campbell, appointed by Governor J. J. Jacob, of West Virginia, under resolutions adopted by the West Virginia Legislature on

February 15 and February 24, 1871. These gentlemen sent a letter to Governor Walker of Virginia notifying him of their appointment and inquiring what channel of communication with Virginia was open to them. Governor Walker replied that the joint resolution of Virginia providing for arbitration had superseded the joint resolution of February 18, 1870, authorizing the Governor to appoint commissioners, and for that reason that he could not appoint commissioners to confer with West Virginia.

He said that the tender of arbitration had not been withdrawn and was still open (W. Va. Comp., pp. 457-459). These commissioners of West Virginia then proceeded to determine for themselves the balance due Virginia from West Virginia, and found the amount to be $953,360.23 (W. Va. Comp., p. 472); but this determination was not satisfactory to the State of West Virginia, and the Senate Finance Committee of the West Virginia Legislature, on December 22, 1873, made a report to the effect that the State of West Virginia was not liable for any part of the debt of the undivided Commonwealth of Virginia, but that the State of Virginia was indebted to the State of West Virginia in the sum of $525,000.00 (W. Va. Comp., pp. 490-493). Ever since that time West Virginia has taken the position that she does not owe any portion of the debt of the undivided Commonwealth of Virginia and that she would not enter into any negotiations looking to the settlement of

the Virginia debt question. West Virginia's Legislature has repeatedly adopted resolutions denying that West Virginia owed any part of the so-called Virginia debt, and that her legislature was opposed to any negotiation whatsoever on that subject (W. Va. Comp., pp. 494-496).

The last visit of the representatives of Virginia to West Virginia with reference to the settlement of the debt took place on May 2, 1911, and subsequent to the time of the filing of the defendant's answer, but the other efforts of Virginia to settle this debt and the refusals of West Virginia to do anything with reference to a settlement are virtually admitted in the defendant's answer in paragraph XI thereof.

It appears from the foregoing that Virginia on five separate occasions, in the years 1867, 1870, 1871, 1895, and 1905, tried to amicably settle this controversy, and, these repeated efforts having failed, that Virginia brought this suit in February, 1906, and in accordance with the decision herein, dated March 6, 1911, that she again endeavored to meet West Virginia, and it also appears that the only time West Virginia was willing in any way to discuss with Virginia the settlement of the debt was in 1871, when West Virginia appointed commissioners to treat directly with Virginia at a time when the General Assembly of Virginia had adopted a resolution providing for the settlement of the controversy by arbitration. It also appears that the findings of this committee fixing West

Virginia's share in even the small sum of about $1,000,000 were repudiated by the West Virginia Legislature of 1873, and that from that time down to the present West Virginia has continually refused to treat with Virginia in any way for the settlement of this controversy. West Virginia is willing to talk now, on condition that her liability is put at practically nothing, and that the decision in the case be ignored; but that is all she is willing to do.

West Virginia's excuse for failure to meet Virginia in 1867 was the pendency of the suit in this court in regard to the counties of Berkeley and Jefferson. The Governor of West Virginia was authorized to appoint commissioners to meet Virginia's commissioners in 1870, but he made no appointment because the legislature had failed to appropriate money to pay the expenses of such commission. Virginia's tender of arbitration in 1871 was declined, so West Virginia said, because West Virginia soon afterward appointed commissioners to treat with Virginia directly. West Virginia made no response to Virginia's offer in 1895, but her legislature declined to negotiate with Virginia and passed the following resolution:

"House Joint Resolution No. 10, Concerning the Virginia Debt.

"(Adopted February 7th, 1895.)

"*Resolved by the Legislature of West Virginia*, That this legislature hereby de-

clines to enter into any negotiations with the debt commissioners, or commission appointed under a joint resolution, adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution."

West Virginia's answer to Virginia's offer in 1905 was the following resolution:

"(H. J. R. No. 7.)

"Joint Resolution No. 3.

"(Adopted January 20, 1905.)

"Relating to the Virginia Debt.

"*Resolved by the Legislature of West Virginia*, That it is the sense of this legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject."

Counsel for West Virginia have attempted to justify West Virginia's refusal to meet Virginia in 1895 and again in 1905 because the resolution of the Virginia Legislature creating the Virginia Commission provided that the commission should not enter into any negotiations thereunder except upon the basis that Virginia is bound only for two-

thirds of the debt of the original State, which she has already provided for as her equitable proportion thereof. An argument was based upon this provision that any negotiations conducted by the Virginia Commission must necessarily assume West Virginia's proportion to be one-third and that of course she was unwilling to negotiate on this basis.

The provision in the act referred to above was an arrangement between Virginia and her creditors. In 1871 Virginia assumed two-thirds of the debt and at once compounded and capitalized all the past-due interest on this portion. The load was more than she could bear and finally, in 1892, she made a final and satisfactory settlement with her creditors. Of course Virginia did not propose to reopen this question. She had, up to 1906, paid out various sums amounting to upwards of $70,000,000 in payment of her proportion of the debt. It was perfectly right that she should stipulate with her creditors that the amount of her liability was already fixed and determined, as in fact it was. There is not the slightest excuse for assuming that the act of 1894, creating the Virginia Commission, or the act of 1900, authorizing this suit, in the slightest degree attempted to fix West Virginia's liability in advance as one-third or to predetermine it to any extent. West Virginia's amount was left open to be determined by negotiation between the parties, and the excuses of counsel, are empty and without meaning. This is espe-

cially true when read in the light of the resolution of West Virginia's Legislature of 1895 and also 1905.

Chairman Mason, in his remarks before the joint conference at Washington, which we have quoted above and shall repeat here, said:

> "But for fifty years, we have been asking, clamoring, and demanding, trying in every way we knew how to get at the question of what is our equitable proportion of that debt" (p. 26).

We do not agree with Chairman Mason. We have stated the facts. We think they show that West Virginia for fifty years has been trying in every way she knew how to avoid the question of what is her proportion of the debt.

Point Five.

West Virginia is Liable for Interest.

The court has held this is a suit on a contract.

It is in fact a suit for the specific performance of a contract made for the benefit of a third party. The contract is set forth in section 8, Article VIII, of the West Virginia Constitution, upon which West Virginia was admitted into the Union. It is as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia

> prior to the first day of January, 1861, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

West Virginia is liable for interest by the express terms of this paragraph. Of course, as it is West Virginia that is speaking, the clause will be construed most strictly against that State. What was the public debt of the Commonwealth of Virginia prior to the first day of January, 1861? The court has already determined that it consisted almost wholly of interest-bearing bonds and the balance of the debt was accrued interest on those same bonds. If the accrued interest prior to the first day of January, 1861, was a portion of the public debt, how is it possible to say that the accruing interest was not. We are willing to accept for the purpose of this argument, as a settled rule of law, that a State is not bound to pay interest unless she promises to do so.

The court has made it very plain that this promise of West Virginia, contained in her constitution, is only the expressed recognition of a deep-seated equity for which she was already liable and by which she was already bound. The court, in its decision of March 6, 1911, said as follows:

> "The liability of West Virginia is a deep-seated equity, not discharged by changes in the form of the debt, nor split up by the

unilateral attempt of Virginia to apportion specific parts to the two States."

If there had been no promise in and no contract made by West Virginia's Constitution, West Virginia would have been just as liable for her equitable proportion of the debt as she is, having made that expressed promise. It will not bear the light of reason to say that, as to Virginia's share, after the dismemberment of the old State, the bondholding creditors of the old State would be entitled to receive interest upon the bonds according to their tenor; but upon West Virginia's proportion thereof, the same creditors holding the same bonds would not be entitled to receive their interest. The equitable obligation falling upon each State to pay its share of the undivided debt is contractual and not tortious. West Virginia is just as liable for her share of these bonds according to the tenor of the bonds as Virginia is liable for her proportion. The fact that West Virginia acknowledged her liability in her constitution, and promised to Virginia to discharge that liability, while it adds another form to West Virginia's obligation does not change the substance of that obligation. It certainly does not change the substance of that obligation to diminish it. Suppose West Virginia, for a sufficient consideration, had assumed the whole debt, would she be heard to say that, while she was liable for the principal of the bonds, the interest upon them, according to their tenor, was

not for her to pay. She proposed, in section 8, Article VIII, which we have discussed, to provide a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years. This shows that both West Virginia and Virginia had in mind, and that Congress had in mind, her liability for the interest as well as for the principal of her share. Suppose when the admission of West Virginia as a State was before Congress, and this clause of her constitution was under consideration, the clause read, "We propose to be liable for the principal of our proportion of the bonds, but we won't pay any interest accruing on our share of the debt until our legislature has ascertained what our proportion of the debt is," West Virginia would not have been admitted as a State. West Virginia is liable for her share exactly as Virginia is liable on her share of the bonds according to their tenor. This clause of her constitution will not bear any other construction. The debt is an interest-bearing debt and West Virginia is liable for it, including all its incidents, as it existed prior to January 1, 1861. West Virginia concedes that she is liable for the accrued interest. There is no term which determines the liability for interest which had accrued, different or additional to the terms which fix the interest to accrue after January 1, 1861. Suppose I give my promissory note to X for $1,000, payable in one year, with interest at 6 per cent; in six months from now Y comes along and assumes my obligation. Does not Y by

that act contract to pay the accruing interest just as much as he contracts to pay the interest which has accrued? In this respect West Virginia is no different from any individual. What we are seeking to determine is the nature of West Virginia's promise. Whatever way we look at it we are forced to the conclusion that her promise is to assume the obligation as it existed. This was an obligation for interest as well as for principal. The question of whether a State is liable for interest except where she expressly promises to pay it does not arise because West Virginia promised. We concede that a State is not chargeable with interest for failure to meet an obligation when due where interest would be imposed as damages against her for her failure to perform her promise. Only *ex contractu* obligations of a State are enforced in this court.

United States *vs.* North Carolina, 136 U. S., 211.

South Dakota *vs.* North Carolina, 192 U. S., 286.

In this case our right to interest is based upon West Virginia's promise to pay it.

In the brief filed on behalf of Virginia upon the argument on the merits after the master's report, West Virginia's liability for interest was very fully discussed (Va.'s Brief, pp. 94-97), and it was there shown to be the law of Virginia that interest is incident to the obligation and, even though not expressed in the contract, is an inherent part of it.

"Under the law of Virginia as repeatedly adjudicated by her highest court, the interest is incident to the obligation, and whenever a debt is due, the debtor is bound to pay interest unless relieved from this obligation by agreement. This is, and has been the law of the Commonwealth for more than one hundred years.

"In Jones *vs.* Williams, 2 Call, 106, decided in 1799, Edmund Pendleton, who was one of the great judges of our country, delivering the opinion of the court said:

> "Interest is allowed because it is natural justice that he who has the use of another's money should pay interest for it."

"Cited with approval in Baker *vs.* Morris, 10 Lehigh, 284; McVeigh *vs.* Howard, 87 Va., 599, and Stuart *vs.* Hurt, 88 Va., 343.

"In Hatcher *vs.* Lewis, 4 Randolph, 152, 147, the court laid down the rules in the following expressive language:

> "*The interest follows the principal as the shadow does the substance.*"

"In Chapman *vs.* Shepherd, the court said:

> "In contracts for the payment of money, interest is not given as damages at the discretion of the court, or jury, but as an incident to the debt, which the court has no discretion to refuse."
>
> Chapman *vs.* Shepherd, 24 Gratt., 377, 384.
>
> Roberts *vs.* Cocke, 28 Gratt., 207.
>
> Tidball *vs.* Shenandoah National Bank, 100 Va., 741.

"Interest is favored both by the legislative and judicial bodies of the State."
Tazewell *vs.* Saunders, 13 Gratt., 354, 370.

"In McVeigh *vs.* Howard, 87 Va., 599, the Supreme Court of Appeals of Virginia said:

"It is the settled rule that when no day is named in the bond or note given for the payment of a precedent debt, it is due and payable on the day of its date, and bears interest from that date, though no interest be reserved. Such an instrument like a bond or note payable, in Virginia, on demand, is payable presently, and bears interest from date. This doctrine is founded in good conscience and correct morals."
* * *

"Citing Jones *vs.* Wiliams and Hatcher *vs.* Lewis, quoted above.

"Such is the law of Virginia as to interest.
"*The law of West Virginia in regard thereto is the same.*

"In Shipman *vs.* Bailey, 20 W. Va., 140, 146, Judge Snyder, announcing the unanimous opinion of the Supreme Court of Appeals of that State, after citing a number of authorities upon the question, stated the rule as follows:

"Other authorities of the same character might be cited, but, we think, we have given sufficient to establish the rule which seems to be, that in contracts for the payment of money interest on the principal sum is a legal incident of the debt and a part of the

contract, and wherever there is a contract for the payment of a specified legal rate of interest, whether such rate is fixed by the contract itself or by the law of the place where the contract is made, the obligation of the contract extends to the payment of such interest as fully as it does to the principal sum, and courts have no more power to change the rate of interest thus fixed, than they have to dispense with the enforcement of the contract either in whole or in part."

"That decision reaffirms another proposition, applicable to this case, already a part of the jurisprudence of West Virginia, by the adjudications of the Supreme Court of Virginia rendered before the birth of the new State, namely, that the *lex loci contractus* controls in the matter of the interest chargeable against a debtor.

"In Pickins *vs.* McCoy, 24 West Va., 344-352, the court affirms Shipman *vs.* Bailey, and adopts the language just quoted from that decision.

"Independently of these West Virginia decisions, such parts of the common law and of the laws of the State of Virginia as were in force on the 20th of June, 1863, when the first Constitution of West Virginia went into operation, and as are not repugnant to said Constitution, were continued and declared to be the law of West Virginia. Section 8 of article XI of the first West Virginia Constitution. And see present West Virginia Constitution.

"The effect of this provision was to adopt for the new State the body of the common and statute laws of the Commonwealth, so far as the same were in force within the boundaries of the new State on the 20th of June, 1863.

"As a part of this body of laws, the law of Virginia as to interest became, and has continued to be, a part of the laws of West Virginia.

"Such, then, was the law of Virginia before, at the time of and since the formation of West Virginia, as to the legal and equitable liability of a debtor or contractor to pay interest. Such has been the law of West Virginia since the hour of her birth. And such was, and is, the law of the contract evidence by the public acts of Virginia and West Virginia set forth in complainant's bill.

"*This is the rule in Virginia as to debts due by the Commonwealth.*

"The question was presented in the celebrated case of Higginbotham's Executrix *vs.* Commonwealth, 25 Gratt., 627.

"That was a suit against the Commonwealth to recover the amount due Higginbotham's Executrix on certain past due dividends on stocks which had been guaranteed and assumed by Virginia by the acts cited in the opinion of the court—26 Gratt., 630, 631.

"There was no express contract by the State to pay interest upon said dividends. The petitioner's claim was for the amount of the dividends 'with its accruing interest.'

"The unanimous decision of the Supreme Court of Virginia was that 'judgment should be entered for the petitioner for the amount of her demand with interest' (*Idem*, p. 641).

(Va.'s Brief, pp. 94-97.)

North Carolina was not held liable for interest which she did not expressly promise to pay. In that State interest, unless expressly promised, is not an inherent term of the contract, but is im-

posed as damages for failure to keep the promise. If by the law of North Carolina the State was charged with interest, whether she expressly promised it or not, the decisions in the above cases would have been otherwise. Under the cases quoted above from the brief of Virginia, West Virginia is liable for interest upon her share of the debt down to the present time even if she had not expressly promised to pay it. If West Virginia had made no express promise about her debt we feel that under the law as laid down in the foregoing cases taken from Virginia's brief West Virginia would be liable for interest from January 1, 1861, up to the present time. *But we do not ask so much.*

It seems to us that West Virginia's liability for interest rests upon her promise in her Constitution; recognizing the deep-seated equity imposed by her action of separation; to pay her proportion of the debt, principal and interest, to the date of maturity of the various bonds according to their tenor. We shall now proceed to show the amount of that liability.

Point Six.

The amount of interest which West Virginia legally owes is $14,055,962.56.

This interest is computed upon West Virginia's share of the bonds outstanding January 1, 1861,

according to their tenor. All the facts and figures upon which the computation is made are found in paragraph 1 of the report of the special master, and these facts and figures are acquiesced in by West Virginia.

We have shown in the previous point that under the law of Virginia, and West Virginia as well,

> "Interest follows the principal as the shadow does the substance."

Interest, where not expressly promised, is not imposed in Virginia and West Virginia as damages awarded by the court against the party who fails to fulfill his promise, but is an inherent term of every contract. Every one in Virginia who makes a promise to pay a sum certain or which can be determined after an accounting or otherwise, also promises, by the inherent terms of the contract, to pay interest up to final payment of the obligation from the time it is created, irrespective of when or how the amount of obligation is definitely determined. We have shown that this same rule prevails against the Commonwealth of Virginia itself. Inasmuch as this is a Virginia contract it is to be construed by the laws of Virginia. These facts distinguish the present case from—

United States *vs.* North Carolina, 136 U. S., 211.

South Dakota *vs.* North Carolina, 192 U. S., 286,

cited above. North Carolina was not subjected to the payment of interest after the maturity of her promise in either of these cases because, in North Carolina, interest against an individual is imposed as damages and not as an inherent part of the obligation. Damages are never awarded against a State, and so North Carolina was relieved from interest after maturity upon her obligations. In United States *vs.* North Carolina (*supra*) the court indicated that the case would be otherwise if the law in North Carolina were as it is in some of the other States and as it is here shown to be in Virginia and West Virginia. If interest, even though not expressly mentioned, is an inherent term of the contract, West Virginia is liable for interest as she is for every other term in the contract.

This application of the law, however, imposes a heavy burden on West Virginia. Interest for fifty years amounts to 300 per cent, and West Virginia's total liability on this basis would be nearly $30,000,000. The court, in its opinion, has pointed out that it would be a severe result to capitalize charges against West Virginia for half a century. That is true. States as well as individuals have made and will continue to make mistakes, and for these mistakes they must pay. The men who made this country of ours built a constitution which has survived and will continue to live in spite of what from time to time looks like sure destruction at the hands of the then current public opinion which

must periodically burst forth in the evolution and progress of our country. The Constitution makers provided for the settlement of disputes between States by "involuntary arbitration." This phrase does not belong to us. It was used by Hon. John W. Mason, chairman of the present West Virginia Debt Commission, in a letter dated May 29, 1908, to Governor Dawson, of West Virginia (W. Va. Comp., vol. II, p. 383). It is very hard upon West Virginia today that her people must keep the promise which they made over fifty years ago in order to secure their political birth into a State of this Union. The hardship upon them of paying their honest debt, however, is probably immeasurably small compared to the hardship that would have fallen upon the people of West Virginia if our constitution had not provided for this method of "involuntary arbitration."

We have already pointed out in this brief that nothing that Virginia or West Virginia has done or failed to do entitles West Virginia to be relieved from the legal consequences of her failure to perform this solemn promise which was a necessary condition precedent to her creation as a State. Certainly no act or omission of the bondholders should relieve her. They have asked West Virginia to pay, and her answer to them was "No," just as her answer to Virginia was "No."

We do not ask for a Shylock application of the law. Undoubtedly many people in West Virginia honestly believe that West Virginia is not a de-

faulting debtor State. No one can read the remarks of the special master in this case at the beginning of paragraph 3 of his report without seeing that the Wheeling ordinance is not predicated upon the amount of the debt, and that the just proportion which it purported to determine would be the same irrespective of the size of the debt. "Just proportion and equitable proportion," from the time of the creation of West Virginia and for thirty years prior, originally meant "cannot be much." Since 1873, in West Virginia, "just proportion" and "equitable proportion" have meant no liability whatever. The report of the Senate Finance Committee of that year crystallized West Virginia repudiation. This has been repeated so often in West Virginia that many of her people have come to believe it is true.

Therefore, and because of the admonition of this court, and notwithstanding the rule of construction that section 8 of article VIII of West Virginia's Constitution should be construed most strictly against West Virginia and in favor of Virginia and her bondholding creditors for whose benefit the contract was made, we do not ask this court to impose the utmost liability for interest on West Virginia, but merely that West Virginia pay interest upon her proportion of the bonds according to their tenor.

All of the bonds are listed in paragraph 1 of the master's report, which follows paragraph 1 of the decree and reports:

"The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness."

These facts and figures found by the master are acquiesced in by West Virginia. An examination of the table in paragraph 1 shows that many of these bonds are redeemable at the pleasure of the General Assembly and draw interest until redeemed.

The 6 per cent registered bonds redeemable at the pleasure of the General Assembly, outstanding in the hands of the public, after deducting all bonds held by the Board of Public Works, the literary fund and the sinking fund amount to $8,957,271.03 and West Virginia's proportion thereof is $1,898,941.46.

The 5 per cent bonds redeemable at the pleasure of the General Assembly outstanding in the hands of the public, after deducting all bonds held by the Board of Public Works, the literary fund and the sinking fund of Virginia amount to $262,000.00 and West Virginia's proportion thereof amounts to $55,544.00.

The James River stock annuity shown in the Master's report to amount to $95,500.00, in the hands of the public, after deducting all bonds held by the Board of Public Works, and the literary

fund and the sinking fund of Virginia, was not evidenced by any form of certificate of debt, prior to January 1, 1861, but that figure is the principal amount required to produce annually at 6 per cent the sum guaranteed forever to the stockholders of the James River Company, and this treatment of the annuity was approved by West Virginia's accountant in joint Exhibit A1 and acquiesced in by West Virginia. West Virginia's proportion of this annuity is $20,246.00.

We have annexed to our brief as Schedule 4 thereof the computation of interest upon West Virginia's share of the bonds. For this purpose the bonds are collected in eight groups. The 6 per cent and 5 per cent registered bonds, redeemable at the pleasure of the General Assembly, and the James River stock annuity comprise groups 1, 2, and 3, respectively. West Virginia's share of the bonds in these three groups amounts to $1,974,731.46, being much less than one-third of the total principal for which she is liable. The court has pointed out in its opinion that no portion of the debt is extinguished, and there is no reason why on this proportion of West Virginia's share she should not pay interest to date. On any basis of computation she is legally bound to do so. This is off-set by the fact that in the case of the remainder of her share she does not pay interest at all on some of the bonds and on the others pays interest to periods which end from 1886 to 1894. Where the Virginia bonds were not redeemable at the pleas-

ure of the General Assembly; but had a definite maturity date; the Master put in his report as the date of the bonds the date of the act under which they were authorized. This, of course, greatly benefited West Virginia because it moved backwards the maturity date of the bonds by a period of time equal to the time between the passage of the act authorizing the issue and the date when the respective bonds under that issue were sold. Virginia did not object to this, for while it considerably reduced the amount of interest due by the method here adopted it tended to simplify the case and reduce the number of items to be considered by the Master and the court.

The bonds in group 4 were created under an act of March 16, 1838, and were redeemable in twenty years, so no interest is charged upon West Virginia's share of this group.

The bonds in group 5 are 6 per cent registered bonds redeemable in 34 years. They were created under acts passed March 23, 1860; March 17, 1856; March 18, 1858, and March 29, 1851. The bonds issued under the act of March 23, 1860, would mature 34 years thereafter, to wit, March 23, 1894 and we have figured no interest on West Virginia's share of these bonds subsequent to that date; the bonds issued under the act of March 17, 1856, would mature 34 years thereafter, to wit, March 17, 1890, and we have figured no interest on West Virginia's share of these bonds subsequent to that date; the bonds issued under the act of March 18,

1858, would mature 34 years thereafter, to wit, March 18, 1892, and we have figured no interest upon West Virginia's share of these bonds subsequent to that date. The bonds issued under the act of March 29, 1851, would mature 34 years thereafter, to wit, March 29, 1885, and we have figured no interest upon West Virginia's share of these bonds subsequent to that date.

Of course, in the bonds comprising this and every other group, no interest is computed prior to January 1, 1861, because the unpaid interest up to that time is found by the Master and accepted by West Virginia as a part of the debt existing upon that date.

The bonds in group 6 are 6 per cent coupon bonds redeemable in 35 years, issued under the act of March 29, 1851, and interest upon West Virginia's share of these bonds is figured to March 29, 1886, being 35 years after March 29, 1851, the date of the act under which they were authorized.

The bonds in group 7 are 6 per cent registered bonds redeemable in 35 years. These bonds were issued in exchange for coupon bonds under act of March 18, 1856, but as these coupon bonds, for which the registered bonds were exchanged, were issued under the act of March 29, 1851, as shown in group 6 we figure the maturity as 35 years after this prior date of March 29, 1851, being March 29, 1886.

The bonds in group 8 are 5 per cent Sterling coupon bonds redeemable in 35 years, issued under

the act of March 29, 1851, and interest upon West Virginia's share of these bonds is figured to March 29, 1886, being 35 years after March 29, 1851, the date of the act authorizing the issue. Adding together the interest chargeable against West Virginia on the bonds in each of these 8 groups here listed the whole interest is found to be $14,055,962.56. This sum is only about two-thirds of the interest for which she would be liable upon a strict enforcement of the full measure of her liability.

Adding to West Virginia's share of the interest as here computed her share of the principal, the total amount of West Virginia's liability is $21,238,470.02.

We shall proceed to show that this amount is less than West Virginia would pay if interest was allowed for 34 years as her legislature was instructed to provide in article VIII of her constitution; it is much less pro rata than Virginia has actually paid upon her share of the debt, and it is about the same as West Virginia would pay if she were to take advantage of the various funding acts which Virginia passed with reference to her share of the debt.

Point Seven.

If West Virginia Should Pay Principal and Interest upon Her Proportion of the Debt in the Same Pro Rata Amount which Virginia Has Paid upon Her Proportion, or if West Virginia Should Scale Both Principal and Interest in the Same Way that the Various Funding Acts of Virginia Provided, or if West Virginia Should Pay Interest for 34 Years as Provided in Her Constitution the Amount Would be More than the Amount We Ask For.

The figures to substantiate these deductions are annexed as Schedule No. 5 of this brief.

Exhibit No. 7 of the plaintiff's bill shows that the amount paid off by Virginia between January 1, 1861, and February 1, 1906, or assumed or carried by her on account of the old debt of the undivided State amounts to $71,861,253.31. This schedule shows that Virginia's then existing interest-bearing debt on this account amounts to $25,537,820.00. Adding to the sum shown in Exhibit No. 7 interest at 3 per cent for seven and a half years upon $25,537,820 makes about $6,300,000, more to be added to the $71,861,253.31 stated as then paid out by Virginia.

If West Virginia does as well by the old bondholding creditors upon her share as Virginia has done with her share West Virginia will pay over

$24,000,000. Instead of $21,238,470.02, which we ask as her share.

If West Virginia paid interest for 34 years as her constitution bade her legislature to provide, West Virginia would pay $21,681,432.96 instead of $21,238,470.02 which we ask as her share.

If West Virginia settled her proportion of the debt on the basis of the 1871 and 1891 Funding Acts of Virginia, she would pay $27,009,087.32; if West Virginia settled her proportion of the debt on the basis of the 1871, 1879, and 1891 Funding Acts of Virginia she would pay $21,130,123.56; if West Virginia settled her proportion of the debt on the basis of the 1891 Funding Act of Virginia alone she would pay $21,145,680.96. If West Virginia settled her proportion of the debt on the basis of the 1871, 1882 Refunding Acts of Virginia she would pay $19,721,628.75. If West Virginia settled her proportion of the debt on the basis of the 1871, 1879, and 1882 Refunding Acts of Virginia she would pay $18,244,193.52.

These Refunding Acts of 1879 and 1882 of Virginia have sometimes been referred to as a partial repudiation, and still on the basis of these acts West Virginia would pay as her share over eighteen million dollars if she should have the benefit of both the acts of 1879 and 1882, taken together, applied to all of her share of the debt.

Conclusion.

We respectfully submit to the court that if the court feels that West Virginia's liability for principal and interest should be less than $21,238,470.02 which as we have already shown as to the interest portion thereof is one-third less than the full limit of her liability and desires to fix the total amount due from West Virginia at a sum less than $21,238,470.02 it should be so fixed only upon condition that West Virginia discharges that liability within a fixed period. If West Virginia does not discharge her liability within the period to be fixed by the court, then she should be held liable for the full amount of her obligation, principal and interest. Seven years of litigation and half a century of waiting is burden enough to impose upon any creditor, even a creditor of a sovereign State.

HOLMES CONRAD,
SANFORD ROBINSON,
Counsel for the Bondholding Creditors.

[Endorsed:] In the Supreme Court of the United States, October Term, 1913. Commonwealth of Virginia *vs.* State of West Virginia. Brief for bondholding creditors.

SCHEDULE I.

***West Virginia's Appendix to West Virginia Compilation, Vol. 1, Pages 444-472, Inclusive, and 490-496, Inclusive.**

Legislature of 1867.

On the 25th day of January, 1867, Governor Arthur I. Boreman sent to the legislature a communication, dated on January 20, 1867, from Governor F. H. Pierpont, of Virginia, together with a certain joint resolution adopted by the General Assembly of Virginia on the 28th day of February, 1866, in reference to the re-union of the States of Virginia and West Virginia and the adjustment of the public debt, and appointing Mr. A. H. H. Stuart, Mr. William Martin and Mr. John Janny as commissioners to proceed to the seat of government of West Virginia, and giving them authority to treat with the authorities of West Virginia on both subjects. On the 28th day of February, 1867, the legislature of West Virginia adopted the following joint resolution, to-wit:

Senate Joint Resolution No. 19, "To provide Commissioners to treat with the authorities of Virginia in regard to the public debt of that State."

Whereas, the General Assembly of Virginia, on the twenty-eighth day of February, 1866, adopted a series of resolutions deeply lamenting the dismemberment of the "Old State," and declaring a sincere desire to establish and perpetuate the reunion of the States of Virginia and West Virginia, and appealing to their brethren of West

* West Virginia's Compilation, Vol. 1, was prepared by Attorney General May of West Virginia. West Virginia's Compilation, Vol. 2, was prepared by Attorney General Conley of West Virginia. Both volumes were filed in the suit by West Virginia and have been repeatedly referred to in the briefs of both sides.

Virginia, to concur with them in the adoption of suitable measures of co-operation in restoration of the ancient Commonwealth of Virginia, with all her people and up to her former boundaries, and further providing for the appointment of three Commissioners with authority to treat on the subject of the restoration of the State of Virginia to its ancient jurisdiction and boundaries, and further empowering said Commissioners to treat with the authorities of the State of West Virginia upon the subject of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State;

And whereas, Commissioners have been appointed on the part of the State of Virginia pursuant to, and for the purpose named in the resolutions aforesaid;

And whereas, the citizens of West Virginia deeply regret the civil strife (for which they are in no way responsible), in the midst of which they secured their State organization, yet they regard their separate State existence of the most vital importance to them, and have no purpose or intention whatever, of reuniting with the State of Virginia;

And whereas, the citizens of this State are not only willing but deeply anxious that a prompt and equitable settlement should be made between the States of Virginia and West Virginia, and they greatly regret that the State of Virginia has interposed a difficulty by the institution of a suit against this State, to recover jurisdiction over the counties of Berkeley and Jefferson, which they fear will delay such settlement; Therefore,

Resolved by the Legislature of West Virginia:

1. That the people of this State are unalterably opposed to a reunion of this State with the State of Virginia, and will not entertain any proposition looking to that end.

2. That so soon as the suit of Virginia against this State, now pending in the Supreme Court of the United States, to recover jurisdiction over the counties of Berkeley and Jefferson has been finally disposed of, the Governor of this State appoint three Commissioners on the part of this State to treat with the Commissioners appointed by the State of Virginia upon the adjustment of the public debt of said State as provided in Section IX of "An ordinance to provide for the formation of a new State," adopted by a convention of the people of Virginia on the 20th day of August, 1861, and in Section VIII, of Article VIII of the Constitution of West Virginia, and report their action to the Governor, to be by him communicated to the Legislature of this State for their approval or disapproval.

Legislature of 1870.

Governor William E. Stevenson in his message on the 18th of January, 1870, called attention to the resolution of February 28th, 1867.

On the 24th day of February, 1870, Gov. William E. Stevenson transmitted to the Legislature of West Virginia, then in session at Wheeling, a communication from Gilbert C. Walker, then Governor of the Commonwealth of Virginia, enclosing an act entitled "An Act for the adjustment of the public debt with the State of West Virginia," which had been passed by the General Assembly of Virginia on the 18th day of February, 1870.

On the 28th day of February, 1870, the Governor of West Virginia transmitted to the Legislature of West Virginia a communication from Messrs. William J. Robertson, W. T. Sutherlin and P. H. Aylett, commissioners appointed on the part of Virginia with reference to the settlement of the public debt of Virginia.

On the 1st day of March, 1870, the Legislature adopted the following joint resolution:

Joint Resolution raising a Joint Committee to confer with the Commissioners appointed by the State of Virginia, to adjust the Public Debt with the State of West Virginia.

Whereas, The State of Virginia, by act approved February the eighteenth, eighteen hundred and seventy, provided for the appointment of three commissioners to treat with the authorities of the state of West Virginia upon the subject of a proper adjustment of the public debt of the state of Virginia; and

Whereas, The governor by a communication dated February twenty-fourth, eighteen hundred and seventy, notified the legislature of the passage of the above recited act; and

Whereas, The governor on the twenty-eighth of February, eighteen hundred and seventy, notified the legislature that said commissioners, on the part of Virginia, had been appointed, and are now in the city of Wheeling for the purpose of carrying said act, above recited, into effect, therefore,

Resolved by the Legislature of West Virginia, That a joint committee of two upon the part of the Senate and three upon the part of the House of Delegates, be appointed by the presiding officers of their respective bodies, to confer with said commissioners, and report to this legislature the result of said conference.

2. All communications connected with said commission are hereby referred to said committee.

On the part of the Senate, Henry G. Davis and William I. Boreman were appointed.

On the part of the House, John J. Davis, Henry

Brannon and Francis H. Pierpoint were appointed.

Joint Resolution adding two members to the joint special committee to confer with the Virginia commissioners.

Resolved by the Legislature of West Virginia, That Daniel Lamb, on the part of the house, and one member on the part of the senate, be added to the joint special committee, to confer with the commissioners of Virginia, in relation to the Virginia state debt.

Adopted March 1, 1870.

The additional member on the part of the senate was J. D. Ramsdell.

So far as the journals of the House and Senate of the session of 1870 show, no report was made by this committee.

On the 3rd of March, 1870, the following resolution was adopted:

Joint Resolution relating to the adjustment of the public debt with the commissioners appointed for the purpose by the State of Virginia.

Resolved by the Legislature of West Virginia, That the governor appoint three resident citizens of this state, one from each congressional district, to treat with the authorities of the state of Virginia on the subject of a proper adjustment of the public debt of that state, due or incurred prior to the first day of January, eighteen hundred and sixty-one, and a fair division of the property belonging to that state on that day; and make report thereof to this legislature for its approval or disapproval at its next regular session, with the

facts and documents upon which their report is founded. *Provided*, that nothing herein contained shall be construed as waiving or impairing in any way the rights of this state to jurisdiction over the counties of Berkeley and Jefferson.

2. The commissioners so to be appointed shall proceed without delay in the execution of their duties, and as compensation for their services, shall receive six dollars per day for the time actually employed therein, and the same mileage as that allowed to members of the legislature.

Legislature of 1871.

Gov. William E. Stevenson in his message to the Legislature of 1871 discussed at length the Virginia debt proposition and explained the reasons why no report was made under the above resolution and submitted the matter again to this Legislature.

On the 15th day of February, 1871, the Legislature adopted the following joint resolution.

Joint Resolution authorizing the appointment of commissioners to treat with the state of Virginia on the subject of the state debt.

Resolved by the Legislature of West Virginia:

1. That the governor, or on after the fifteenth day of March, 1871, appoint three disinterested citizens of this state to treat with the authorities of the state of Virginia on the subject of a proposed adjustment of the public debt of that state prior to the first day of January, 1861, and make report thereof to the governor, to be printed and communicated by him to the legislature, at the commencement of its next session, for approval or disapproval.

2. The commissioners so to be appointed are further directed to ascertain and report the amount of said debt then held by persons other than the state of Virginia, and what said debt was incurred for, and what amount of this state debt was then held by the commissioners of the sinking fund and by the board of the library fund; that they ascertain and report the amount of all investments then held by the state, their respective amounts and character, and what portions thereof were then productive, and the dividends therefrom, and whether any of such investments then so held by said state have since been donated, changed, converted or disposed of by the authorities of said state, and if so, the amount and how disposed of; that they ascertain and report the revenue derived for the fiscal year ending on the thirtieth of September, 1860, from all sources, by the state of Virginia, within the present territory of Virginia, and the amount derived from all sources from the territory now composing the state of West Virginia; and that they report any other relevant matter deemed proper by them.

3. The commissioners so to be appointed shall proceed without delay in the execution of their duties, and as a compensation for their services shall each receive six dollars per day for the time they or any one or more of them may be actually employed therein, and the same mileage as that allowed to the members of the legislature, and may employ such accountant or clerk, at a reasonable compensation, as they may deem necessary; and the governor shall have the power to remove any one or more of the commissioners, and fill any vacancy that may occur from removal, death or failure to act.

4. Nothing herein contained shall be construed as waiving or impairing in any way the rights of

this state to jurisdiction over the counties of Berkeley and Jefferson.

5. That the foregoing resolutions be communicated by the governor to the governor of Virginia.

Adopted, February 15, 1871.

On the 15th day of February, 1871, the Legislature adopted the following joint resolution:

STATE OF WEST VIRGINIA,
EXECUTIVE DEPARTMENT,
CHARLESTON, *February* 17, 1871.

Gentlemen of the Senate:

I have the honor herewith to transmit a certified copy of a Joint Resolution, adopted by the General Assembly of Virginia, and approved February 11, 1871, tendering to West Virginia an arbitration for the apportionment of the public debt, which I this day received from His Excellency the Governor of Virginia. The resolution is accompanied by a letter from His Excellency, addressed to the Governor and Legislature of West Virginia, which I also respectfully communicate.

W. E. STEVENSON, *Governor.*

COMMONWEALTH OF VIRGINIA,
EXECUTIVE CHAMBERS,
RICHMOND, *February* 10, 1871.

To His Excellency the Governor and General Assembly of West Virginia:

In pursuance of the authority vested in the Governor by a Joint Resolution passed by our General Assembly, and approved on the fourteenth day of February instant, entitled "Joint Resolution tendering to West Virginia an arbitration for the apportionment of the public debt," an authenticated copy of which is hereto attached, I

Gilbert C. Walker, Governor of the Commonwealth of Virginia, on behalf of said Commonwealth, do hereby tender to the State of West Virginia "an arbitration of all matters touching a full and fair apportionment between said States, of the said public debt, contracted by the State of Virginia prior to January 1, 1861," upon the conditions in said Joint Resolution specified, viz: Each State to select two arbitrators, not residents thereof, and the four thus selected to appoint an umpire, if they shall deem it advisable, and the arbitrators and umpire thus chosen, to proceed, as soon as practicable, to adjust, award and decide upon fair, just and equitable principles what proportion of said public debt should be paid by West Virginia, and what part thereof should be paid by the State of Virginia: each State being represented by counsel if desired. The sole duty of the arbitrators and umpire will be to ascertain the amount of the public debt which each State ought justly to assume and pay.

It is earnestly hoped that the State of West Virginia will promptly accept this fair and equitable mode of adjustment of the public debt, to the end that the question involved may be speedily, satisfactorily and finally settled.

I have the honor to be, very respectfully, your obedient servant,

G. C. WALKER,
Governor of the Commonwealth of Virginia.

Joint Resolution Tendering to West Virginia an arbitration for the apportionment of the public debt.

(Approved February 11th, 1871.)

Whereas, the constitution of both Virginia and West Virginia impose upon the respective legis-

latures of said States the duty to provide by law, for the adjusting between them the proportion of the public debt, contracted prior to the first of January, 1861, proper to be borne by each of said States; and

Whereas, it is essential to the financial interests of Virginia that said settlement should be obtained as soon as practicable, therefore

Be it Resolved by the General Assembly of Virginia:

That the Governor of this Commonwealth be, and he is hereby, authorized to tender to the State of West Virginia an arbitration of all matters touching a full and fair apportionment between said States of the public debt, and in the event of the acceptance of such offer of arbitration by West Virginia, then the Governor, Lieutenant Governor, President of the Court of Appeals, Auditor of Public Accounts and the Secretary of the Commonwealth shall appoint two arbitrators on the part of this State, who shall not be citizens of this State, to meet any two arbitrators selected by West Virginia, not citizens of said State.

The arbitrators so appointed shall, if they deem it advisable, appoint an umpire. Said arbitrators and umpire shall, as soon as practicable, proceed to adjust, award and decide upon fair, just and equitable principles what proportion of said public debt shall be paid by West Virginia, and what part thereof shall be paid by this State. Said apportionment, when ascertained and made, to be reported by said arbitrators to the Legislatures of said States, to enable them to carry out such award or apportionment by appropriate legislation.

Each State may be represented by counsel, and the board hereby directed to appoint the arbitrators for Virginia shall be, and are hereby, authorized to draw on the Treasury of the State of Virginia, out of any money not otherwise appropri-

ated, a sum sufficient to defray the necessary expenses of this arbitration on the part of Virginia.

A copy.

(Signed) J. BELL BIGGER,
Clerk of House of Delegates and
Keeper of the Rolls of Virginia.

February 11, 1871.

On the same day the Legislature adopted the following joint resolution:

"Senate Joint Resolution No. 19, 'Raising a Joint Special Committee to consider the communication from the Governor of Virginia, concerning the proposed arbitration of the debt between Virginia and West Virginia.'"

"*Resolved by the Legislature of West Virginia:*

"That a Joint Special Committee of three on the part of the House of Delegates, and two on the part of the Senate, be appointed to consider and report on the communication from the Governor of Virginia, concerning the proposed arbitration of the public debt between Virginia and West Virginia."

On the part of the Senate, Mr. Henry G. Davis and Mr. George Koonce were appointed as members of such committee, and on the part of the House, Mr. James M. Jackson, Mr. James H. Ferguson and Mr. George C. Sturgiss were appointed as members of such committee.

On the 20th day of February, 1871, this special committee made the following report:

"To the Legislature of West Virginia:

"The Joint Special Committee, to whom was referred the special message of the Governor of the State, enclosing a Joint Resolution of the Gen-

eral Assembly of Virginia and the communication of the Governor of said State, tendering to West Virginia an arbitration for the apportionment of the public debt of Virginia contracted prior to the first of January, 1861, have had the same under consideration and submit the following

Report.

"The Legislature, by Joint Resolution No. 21, passed February fifteenth instant, having conferred upon the Governor authority, and instructed him to appoint three disinterested citizens of this State to treat with the authorities of the State of Virginia, on the subject of a proper adjustment of the public debt of that State, prior to the first day of January, 1861, and the authorities of the State of West Virginia having ever evinced a sincere desire to adjust and settle at the earliest practicable moment, the proportion of said debt proper to be borne by each of said States, and the Committee believing that the citizens of the respective States would of necessity be more familiar with the circumstances attending the creation of said debt and the many intricate questions connected therewith, and upon the proper comprehension of which must depend the equitable adjustment and apportionment of the same between said States, recommend that said tender of arbitration by arbitrators and umpire not citizens of either State, be respectfully declined; and that the said State of Virginia be invited to appoint three disinterested citizens of that Commonwealth as Commissioners, with authority to treat with like Commissioners to be appointed under said Joint Resolution No. 21, on behalf of this State, with power to adjust, award and decide upon fair, just and equitable principles, what proportion of said debt should be paid by each of said States,

subject to the ratification and approval of the General Assembly of Virginia and the Legislature of West Virginia; and to carry out the objects herein stated; the Committee recommend the adoption of the following:

"Senate Joint Resolution No. 21, 'Providing for the settlement of the debt between Virginia and West Virginia.'"

"Whereas, the Legislature of West Virginia in discharge of the duty imposed by the Constitution of the State, to 'ascertain as soon as may be practicable' the equitable proportion of the public debt of the Commonwealth of Virginia to be assumed and liquidated by this State, has authorized and directed by Joint Resolution passed on the fifteenth day of February, 1871, the appointment by the Governor of 'three disinterested citizens of this State to treat with the authorities of the State of Virginia on the subject of a proper adjustment of the public debt of that State, prior the first day of January, 1861;'" and

"Whereas, the Governor of the Commonwealth of Virginia, by authority conferred by a Joint Resolution of the General Assembly of said Commonwealth, passed February 11th, 1871, has tendered on behalf of said Commonwealth to the State of West Virginia, 'an arbitration of all matters touching a full and fair apportionment between said States, of the said public debt' by arbitrators, not citizens of either of said States, and not subject to the ratification of the legislative departments of said States; and

"Whereas, any adjustment of the said debt should be subject to such ratification; and

"Whereas, citizen commissioners would of necessity be more familiar with the circumstances

attending the creation of said debt, and the many intricate questions connected therewith, and upon the proper comprehension of which must depend the equitable apportionment and adjustment of the same between said States; therefore,

"*Resolved by the Legislature of West Virginia:*

"1. That the tender of an arbitration made by the Governor of the Commonwealth of Virginia to this State for the adjustment of the public debt of said Commonwealth, having been anticipated by the action of the Legislature of this State, authorizing the appointment of Commissioners to treat upon said subject, the said tender is respectfully declined, and the Commonwealth of Virginia is invited to appoint three disinterested citizens as Commissioners with authority to treat with like Commissioners heretofore authorized on the part of this State. And said Commissioners on behalf of this State in addition to the powers heretofore conferred, are hereby further empowered to proceed, as soon as practicable, to adjust, award, and determine, upon fair, just and equitable principles, what proportion of said public debt of Virginia should, in their opinion, be paid by West Virginia, and what part thereof should be paid by Virginia, subject, however, to the approval and ratification of the Legislature of West Virginia and the General Assembly of Virginia.

"2. The governor of this State is hereby directed to communicate to the Governor of the Commonwealth of Virginia, without delay, certified copies of this preamble and Joint Resolution.

Respectfully submitted,

JAMES M. JACKSON,
JAMES H. FERGUSON,
GEORGE C. STURGISS,
H. G. DAVIS,
GEORGE KOONCE,
Committee."

"February 20, 1871."

This report was signed by all the members of the Committee and the resolution therein set out was on the 24th day of February, 1871, adopted by the Legislature.

Under the resolutions of February 15th and 24th Governor J. J. Jacob appointed Mr. John J. Jackson, Mr. J. M. Bennett and Mr. A. W. Campbell.

Report of the Virginia Debt Commissioners of 1871.

Report of the Virginia Debt Commissioners of 1871.

To His Excellency J. J. Jacob, Governor of West Virginia.

SIR: Under the joint resolutions passed by the West Virginia Legislature on the 15th and 24th days of February, last, the undersigned were appointed Commissioners by you "to treat with the authorities of Virginia on the subject of a proposed adjustment of the public debt of that State prior to the first day of January, 1861," and were directed by the legislature "to make report thereof to the Governor," which we have the honor to do as follows:

On the 9th day of August last the Commissioners met in Parkersburg to confer together upon the subject matter of their appointment and to organize a programme of procedure in respect thereof. They addressed a letter to your Excellency notifying you of their meeting and organization, and also the following letter to Governor Walker, of Virginia:

PARKERSBURG, W. VA., *August* 9, 1871.

To His Excellency the Governor of Virginia.

SIR: The undersigned have the honor to inform you that under the joint resolutions passed by the legislature of West Virginia on the 15th and 24th days of February last, they have been appointed Commissioners by the Governor of West Virginia to treat with Virginia in regard to the debt as it stood on the first day of January, 1861."

Also, that they met in this city to-day for the purpose of entering upon the discharge of their duties, and to this end have designated General John J. Jackson as their chairman, through whom they propose to receive such communications as your Excellency may be pleased to submit.

Will your Excellency be pleased to indicate at your earliest convenience what action, if any, has been or is likely to be taken by Virginia in the matter of appointing Commissioners, or, in the event of no such appointments, what channel of communication will be open to us.

We have the honor to be

Your Excellency's most ob't servants,

JOHN J. JACKSON.
J. M. BENNETT.
A. W. CAMPBELL.

After forwarding this letter, together with the one to your Excellency, the Commissioners adjourned to meet in Richmond on a day to be agreed upon later in the season, there to confer with the authorities of Virginia, and to make such examination of public documents as might enable them to carry out the objects of their appointment.

Meanwhile they received from the Governor of Virginia in answer to their letter of August 9th, a letter dated September 7th, the same purporting to be a copy of a letter addressed to your Excellency, and which is as follows:

EXECUTIVE CHAMBERS,
RICHMOND, *Sept.* 7, 1871.

His Excellency J. J. Jacob, Governor of West Virginia.

SIR: I have the honor to acknowledge the receipt of your communication of the 17th ulto., notifying me of the appointment of Messrs. Bennett, Jackson and Campbell as Commissioners on behalf of the State of West Virginia to treat with the authorities of this State upon the subject of the State debt. I have also received a certified copy of the joint resolutions empowering you to make these appointments. Absence from the capital has prevented an earlier response to these several communications.

On the 18th of February, 1870, an act was passed by the Legislature of this State, and approved by me, authorizing the Governor to appoint three Commissioners on behalf of this State to treat with the authorities of West Virginia upon the subject of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, and a fair division of the public property.

Commissioners were promptly appointed under this act, and notice of their appointment, together with an authenticated copy of the act, were at once forwarded to the Governor of West Virginia. No response whatever to my communication was made by the Governor of West Virginia, but I learned through other sources that the matter was promptly submitted to the Legislature then in session, by which, either by act or resolution, the Governor was authorized to appoint Commissioners to meet and confer with those appointed from Virginia. I have never been informed, however, of the appointment of any Commissioners under the authority thus conferred.

A history of these proceedings, together with a statement of my own views upon the subject, was submitted to our Legislature in my annual message of December last, a copy of which I herewith enclose. The Legislature, acting upon the suggestion of the message, on the 11th day of February last, by a joint resolution, authorized the Governor to tender to the State of West Virginia "an arbitration of all matters touching a full and fair apportionment between said States of the said public debt," an authenticated copy of which joint resolution, together with the tender of an arbitration as therein authorized, was promptly forwarded to the Governor of West Virginia.

This joint resolution, while it does not in terms repeal the act of February 18th, 1870, was intended to *supersede* it, and therefore I do not feel authorized to appoint Commissioners. Our tender of an arbitration has not been withdrawn, and I regret exceedingly that the authorities of West Virginia declined to accept it. I cannot understand what reasonable objection can be raised to this fair and equitable mode of adjustment so frequently resorted to by individuals and nations, and I trust that West Virginia will reconsider her action and accept the more speedy and satisfactory mode of settlement proposed by Virginia, to the end that prompt justice may be done to the creditors of the old State, and that harmony and good feeling may prevail between the people of the two States.

Very respectfully,

Your Excellency's ob't servant,

G. C. WALKER,
Governor of Virginia.

(P. S.—Accompanying the above.) "The foregoing is a copy of the original letter mailed to Governor Jacob."

From this letter we at once understood that so fas as a conference with Commissioners or other persons authorized to represent Virginia in that capacity was concerned, our mission was at an end. But the joint resolution under which we were acting, copies of which you had forwarded for our guidance, directed that we should "ascertain and report the amount of the debt of Virginia on the first day of January, 1861, and what said debt was incurred for, and what amount of this State debt was then held by the Commissioners of the Sinking Fund, and by the Board of the Library Fund." Also that we should "ascertain and report the amount of all investments then held by the State, their respective amounts and character, and what portion thereof were then productive, and the dividends therefrom, and whether any of such investments then held by said State have since been donated, changed, converted or disposed of by the authorities of said State, and, if so, the amount and how disposed of." Also that we should "ascertain and report the revenue derived from the fiscal year ending on the 30th of September, 1860, from all sources by the State of Virginia within the present territory of Virginia and the amount derived from all sources from the territory now comprising the State of West Virginia;" and also that we "report any other relevant matter deemed proper" by us.

In addition to the foregoing duties thus devolved upon us by the terms of the joint resolution passed on the 15th day of February, we "were further empowered," in the language of the additional joint resolution passed on the 24th of the same month, "to proceed as soon as practicable to adjust, award and determine upon fair, just and equitable principles what proportion of said public debt of Virginia should in their opinion be paid by West Virginia, and what part thereof should be

paid by Virginia, subject, however, to the approval and ratification of the Legislature of West Virginia and the General Assembly of Virginia."

Under this authority and direction, thus minutely specified to us, we felt called upon to take substantially the same steps after the receipt of Governor Walker's letter of September 7th as we would have taken had we expected to meet Commissioners representing Virginia, viz: to go to Richmond and endeavor to gather the information expected and required under the terms of our appointment.

Accordingly we met in that city on the 9th of November last and after spending several days in the examination of such public documents as were available to us at the Capitol, and realizing the necessity for further and more explicit and official information than we could gather of ourselves unassisted from said documents, we addressed the following note to the Second Auditor of Virginia:

RICHMOND, *November 14th*, 1871.

To the Second Auditor of Virginia:

SIR: I am directed by the Commissioners representing West Virginia in the matter of the public debt of Virginia prior to the first of January, 1861, to procure from your office such information as can be furnished upon the following points, viz:

1. The actual amount of the public debt of Virginia on the first of January, 1861. And under the head the amounts of said debt owned by the Sinking Fund, the amount owned by the Literary Fund, and the amount owned by the Library Fund.

2. What portion of the bonded debt was invested, and how invested on the first of January, 1861. Also what portion of the investment was productive, what were the dividends or profits

arising therefrom for the year 1860, and whether any such investments have since been donated, changed, converted or otherwise disposed of.

3. What portion of the appropriations expended in West Virginia for public improvements came from the sales of State bonds and what portion from the revenues or taxes of Virginia.

4. A copy of the advertisement for the redemption of a portion of the public debt on the first of January, 1861.

5. A statement of the amount of public debt actually redeemed on the first of January, 1861, pursuant to said advertisement.

Upon these points the Commissioners desire to hear from you at your earliest convenience.

Very respectfully, your obedient servant,
A. W. CAMPBELL, *Secretary.*

In reply to the foregoing communication we received the following note at 5 o'clock on the evening of the 16th of November, after a lapse of two and a half days, and after we had abandoned all hope of the assistance asked for in our letter, and after, in fact, we were on the eve of our departure for home:

SECOND AUDITOR'S OFFICE,
RICHMOND, *Nov.* 16, 1871.

A. W. Cambell, Esq., Secretary, &c.:

DEAR SIR: Yours of the 14th was received. You ask me for a report upon a variety of questions connected with our public debt, the transactions of the Board of Public Works in regard to it, and the financial affairs of the State, which it is understood, of course, you propose to use in the contemplated adjustment of the portion to be paid by West Virginia of the debt.

To answer the questions propounded would in-

volve an amount of labor which we could not bestow on the subject.

But, apart from this, I presume at an early day this office will be called upon by the Executive or the General Assembly of Virginia for detailed reports of all the matters referred to, which will be available to you.

The books and records of this office are open to your inspection.

I trust that in failing to respond to your inquiries you will not regard me as in any wise wanting in official courtesy to you or your associates. None, certainly, is intended.

I have the honor to be,

Most respectfully yours,

ASA ROGERS.

With the reception of this note the Commissioners closed their labors in Richmond, finding that a further stay was not likely to add to the scant information already gleaned by them from the public documents.

It is proper to say in connection with the Second Auditor's communication that we, in delivering our own communication to him, caused it to be verbally understood that we were ready and willing to pay for the services of an expert, competent to obtain for us the information requested, and that we did not desire or intend to trench upon the services of any one with whose duties the labor required might seriously conflict.

After this termination of their visit to Richmond, the Commissioners agreed to meet again on the 12th of December following, at Parkersburg, there to prepare and transmit to your Excellency such information as they had been able to obtain, and such as they might still further obtain, and along with it such an expression of opinion as is called for in the joint resolution of February 24th.

Accordingly we met in Parkersburg at the date named, and after nearly two weeks of examination and comparison of all the sources of information accessible to us, agreed upon and drew up the facts and statements hereinafter presented.

Previous to this meeting we had just received copies of the Richmond papers of December 7th, containing Governor Walker's message to the General Assembly of Virginia at its meeting on the 6th, in which we observed that among other allusions to the debt question pending between the two States, and after a reference to our correspondence with him of August last and his answer thereto, as already quoted, he proceeds to arraign the good faith of the authorities of this State as follows:

"Now, if the authorities of West Virginia entertained an earnest desire to make a speedy and final settlement of this matter, why did they not accept our tender of arbitration? A mode of settlement of such controversies universally recognized by both nations and individuals as right and appropriate. Suppose an equal number of Commissioners appointed by each State, and that they should meet and disagree upon any or all points involved, who is to decide between them? And yet, beyond a doubt, they would radically disagree upon the first or chief point to be settled, viz: the basis or principle upon which the settlement should be made. But suppose that the Commissioners should finally agree, does any one suppose that their finding would be ratified by the legislatures of the two States, disagreeing as the people do radically upon the merits of the question at issue? Of course not."

This quotation from Governor Walker's message fairly exhibits the spirit in which he has seemed to view not only our own efforts to carry out the objects of our appointment but likewise

the sincerity and good faith of the Legislature of West Virginia in providing for the appointment of such a commission by your Excellency. And yet while this is the case it is not to be forgotten that Virginia herself initiated this method of attempting to adjust the debt question. And the language of the Governor would seem to be all the more gratuitous in such a connection from the fact that in his annual message of December 7th, 1870, he considered it worth while to allude to the political change that had taken place in this State at the preceding October election, and bespoke in so many words for the "new administration" an "opportunity of manifesting its intentions and its appreciation of honesty and fair dealing." And yet notwithstanding this language by himself thus voluntarily employed on our behalf, and notwithstanding also the fact that one of the early acts of the "new administration" was to respond to the policy that Virginia herself had initiated, and before it was known in this State that she had changed that policy, and while the appointees under the response were in Richmond seeking in vain from the proper authority of Virginia for such information as every debtor is entitled in law to receive from his creditor, saying nothing of that spirit of "fair dealing" that was so conspicuously spoken on our behalf, Governor Walker proceeds in his late message to asperse the good faith of the State of West Virginia after the manner and in the words that we have quoted.

The authorities of West Virginia have never assumed to themselves any right of precedence in the matter of a policy for adjusting the difficulties surrounding the debt question. But in the joint resolution passed on the 24th of February last they did assume the modest right of adhering to the policy already inaugurated by the State of Vir-

ginia, and by her so freely tendered heretofore for their acceptance, and therefore they respectfully declined to adopt a new and different proposition from her until they could test the merits of the one already adopted.

Apparently the present Executive of Virginia, from an enforced familiarity with the workings of "personal government," which he so much deplores, has acquired ideas as to the right of the initiative between equal contracting parties that are scarcely consistent with the delicacy of the issue pending between this State and his own. For instance, in his letter of September the 7th, he tells us that the legislature of Virginia, upon his suggestion, has tendered an arbitration to this State, and he trusts "that West Virginia will reconsider her action and accept the more speedy and satisfactory mode of settlement proposed by Virginia." And again, in his late message, he says that "the better course to be pursued is for the two States to submit the whole question to arbitration," and West Virginia is arraigned, as heretofore shown, for not concurring in his opinions. Apparently it did not occur to the Governor that since Virginia had proposed both modes of settlement to this State, the latter might make her choice between them without subjecting her motives to imputation. And yet all that she had assumed to do is simply to chose between two policies initiated by Virginia. Unless, therefore, it can be shown that it is the prerogative of that State to prescribe the terms upon which the debt shall be adjusted the question should hereafter be discussed in a spirit better calculated to allay all sectional irritation.

But we pass from this incidental reference to Governor Walker's strictures upon the attitude of this State towards the debt question to the action

of the Virginia legislature upon the same question as embodied in the act approved on the 30th of March last, and known as the Funding bill. This act is in keeping with the initiatory legislation in regard to the debt to which we have just referred. It assumes to apportion the debt of that State arbitrarily, notwithstanding her authorities had six weeks before the passage of the act received notice of the joint resolution of the West Virginia Legislature providing for the appointment of Commissioners. It assumes, also, to apportion the debt, not as it stood on the first day of January, 1861, but as it would stand on the first day of July, 1871, after the interest had been twice compounded, once in 1866, and again at the date last named; and to apportion it, too, upon the basis of territory and population, and without any reference to the equities that should always govern an assignment of debt between sections that were so notorious in our own case. In other words it assumes to apportion to West Virginia one-third of the debt as it now stands, simply on the ground that she has one-third of the territory and population formerly belonging to Virginia, and without reference at all to the question of resources and values. This is apparently the practical result which Governor Walker hoped to reach when he urged upon us the "more speedy and satisfactory mode of settlement proposed by Virginia," inasmuch as he tells us in his late message that this is the "plan for a reorganization of the State debt," which he "had recommended twelve months before."

But without reference to the authorship of this or any other "plan" for adjusting the debt question, we propose to consider as briefly as possible the real cause now pending between Virginia and West Virginia as we understand it.

The tables or statements which we annex as part

of our report show, among other things, the following facts:

That the funded debt of Virginia on the first day of January, 1861, was $31,778,867.32, after all reductions.

That all, or nearly all, of this debt was incurred for and actually expended in works of public improvements, such as canals, railroads, turnpikes, plank roads and bridges.

That this vast sum, upwards of $30,000,000 was expended for improvements in the present State of Virginia, and only about two and a half millions in the present State of West Virginia.

That the present State of Virginia contains 41,352 square miles and West Virginia only 20,000 square miles, or less than one-third.

That the counties composing what is now Virginia contained by the census of 1860 a population of 1,220,829, and those composing West Virginia only a population of 374,985, or less than one-fourth.

To these exhibits we append others, under our instructions from the legislature, but they are such as do not enter into our argument here, which is to show that no just apportionment of the debt can be made upon the basis of population and territory alone, which is the basis upon which the Virginia Funding bill is confessedly predicated.

This theory of apportionment is apparently quite current among the people of that State, and is defended with ability by Judge Meredith, of Richmond, in a carefully prepared paper on the subject. His position is that West Virginia should pay one-third of the debt because, as he says, it is a principle of international law governing the division of nations that "the obligations which had accrued to the whole before the division are, unless they are the subject of special agree-

ment, ratably binding upon the different parts." This he gives as a quotation from Phillimore. Two inquiries present themselves in connection with it. First, was Virginia a nation in the sense intended by Phillimore? and, second, what are we to understand by a ratable part of a debt? We presume that it will not be contended that the general rights and obligations of a nation, as defined by international law, belonged to Virginia prior to the division of the State, and therefore we cannot admit the applicability of the quotation in that particular. Neither can we admit Judge Meredith's construction of the word ratable. He applies it exclusively to territory and population and excludes everything in the shape of resources and value, such as public works, buildings and institutions, which, as we all know, vitally affect the equity of a division of territory.

Judge Meredith next adduces the following quotation from Chancellor Kent to sustain his position:

"If a State should be divided in respect to territory, its rights and obligations are not impaired, and if they have not been apportioned by special agreement those rights are to be enjoyed and those obligations fulfilled by all the parts in common."

This quotation is much more intelligible and just, and we think will tend to sustain the conclusions we have reached, as hereinafter stated.

In addition to the two quotations already given, Judge Meredith cites other authorities to sustain his position that West Virginia is chargeable with one-third of the debt, but we do not regard them as applicable to the case under consideration. First, because Virginia is not a nation. Second, because in all the cases referred to in the authorities quoted, treaty stipulations had more or less to do with the question. Third, because the debts were

war debts, the benefits of which, if any, accrued to each individual, and the obligations of which therefore rested upon each. In no instance was the debt created for internal improvements which necessarily confer partial and local benefits that in most cases exceed the general benefit to the State at large. We, therefore, fail to see the proper analogy that should exist to make these citations precedents for the case of Virginia and West Virginia.

Judge Meredith winds up these references to various authorities, by two general deductions of his own, as follows:

1. "That the public debt of a State is not affected by a change in the form of its government, nor by the partition of its territory into two States, but remains in full force and must be discharged."

2. "That if a State be divided into two or more States, the debts which had been contracted by the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts in proportion to territory and population."

The first deduction it is not necessary to consider, as West Virginia, in her ordinance of separation from Virginia, as also in her constitution, agreed to pay an equitable proportion of the public debt. What that equitable proportion is we are now considering.

In reference to the second deduction we have to remark that Judge Meredith draws a conclusion from his authorities which they do not sustain. Phillimore, for instance, says that "if a nation be divided into various distinct societies, the obligations which had accrued to the whole before the division are ratably binding upon the different parts." Here Phillimore and the authorities stop. But this does not suffice for the Virginia side of the question, and Judge Meredith adds

after the word "parts" the words "in proportion to territory and population." These words are not found in any of the authorities, so far as we are advised, and certainly not in any of the quotations adduced by the Judge.

A moment's consideration will show that a division of debt according to population and territory would not only be impracticable but would conflict with common sense. It would be impracticable because it does not determine the relative value of each one of the two elements of population and territory. Suppose the population to be twice as much as the territory, or suppose the territory to be three times as great as the population, which element has the greater value in determining the result?

Without pursuing this thought further it is manifest that nothing is settled by such a rule. You must fix the relative value of the two elements before you can reach a conclusion. It is, therefore, plain why the books do not give the rule as stated by Judge Meredith. Because of its indefiniteness, but mainly because of its injustice. Would any sane man lay down a rule for the division of a State which would ignore the great cities, public improvements, public works, institutions of all kinds, great commercial advantages, such as rivers and harbors and the great advantage of fertility; all of which, and many other elements of wealth, property and power, might be found in one division and be wholly absent in the other. Hence we say that such a rule is repugnant to common sense.

A public debt is mainly a charge upon the wealth and resources of a people. It is represented by taxes, and taxes are imposed not on numbers or square miles but on resources and values. How much stronger is the case when the very debt under

consideration was created in developing and enriching one portion of the State almost exclusively. Nay, more, when that division of the State is in possession of and enjoying, giving away and selling at auction and otherwise disposing of the very subjects for which the debt was created.

These considerations afford abundant reason why no authority would say, in the absence of a compact (unless there was perfect homogeneity) that it would be just to divide a "nation" any more than an individual estate by population and territory. We doubt not that Judge Meredith himself would scout the idea of dividing an estate on such a basis and without reference to the quality of the land and the improvements made. Why then would he ignore such considerations in apportioning a public debt between two divisions of a State? Chancellor Kent, whom he has quoted, does not sustain him in so doing. The quotation already given from that author says that "if a State should be divided in respect to territory its rights and obligations are not impaired; and if they have not been apportioned by agreement, those rights are to be enjoyed and those obligations fulfilled by all the parts in common." Not a word in this quotation about a division ratably according to population and territory. According to this authority the State of Virginia was only a tenant in common with West Virginia in all the public works, improvements and property of the original undivided State, and had no authority to alienate, sell, give away, or dispose of any of the public works, and being in possession and holding them for her own exclusive use and benefit, by ousting West Virginia, she would be bound to account to the latter for her share. This would seem to be the legitimate conclusion from the authorities relied on by Judge Meredith, even admitting their applicabil-

ity to the case under consideration, which we do not concede by any means; and, therefore, with this reference we pass them by.

We think we take a more practicable view of the subject, and one which will attain all the ends of justice. The table accompanying this report shows that the bonded debt of Virginia on the first day of January, 1861, represented money borrowed and expended in improving the State by canals, railroads, turnpikes, plank roads and bridges. All these expenditures conferred a local and special benefit, were expended, not only by the outlay of the money in creating a market and stimulating enterprise and trade, but in otherwise developing the resources of particular localities to an extent quite equal to the general benefit of the State at large. And this local and general development is the sum of the value of the improvements to the section where located, and gives them an inestimable and abiding value to that section. This value is progressive and not susceptible of being fixed. So certainly is this the case that it is probable, if it were practicable to utterly extinguish these improvements, and thereby extinguish the debt, that the State where they are located would not listen to such a proposition.

It may be assumed then that the public works for which the debt was created are worth what they cost. Virginia, by selling, donating, and disposing of these works as her own property, without regard to the rule laid down by Chancellor Kent, and without consulting West Virginia, must be taken to have accepted them on that basis, and is therefore chargeable with them on that basis.

When the tables are consulted they will show an expenditure of over thirty millions in Virginia and about two and a half millions in West Virginia. Much of this latter was expended at comparatively recent dates, whereas the expenditures in Virginia

range through a period of fifty years, with benefits accruing more or less throughout that period. In the light of such facts, we submit that no intelligent mind, wishing only to do justice, can doubt for a moment that the benefits conferred, and not the territory and population, should be the principal, if not the only basis of an adjustment of the debt. The Governor of Virginia, in his message of 1870, and again in 1871, and the Legislature of that State, by its funding bill, seem, however, to have entirely overlooked the foregoing considerations, and to have jumped to the conclusion that West Virginia should pay one-third of the debt.

We see the case differently. On the one hand, for instance, we see rich cities, commercial marts of all kinds, navigable rivers, fine harbors, a highly improved and productive territory, wealthy capitalists and a well to do people, public institutions, such as a State Capitol and extensive public grounds, an Executive Mansion, a Penitentiary, Armory, University, two Lunatic Asylums, a Military Institute, a Blind Asylum, a valuable miscellaneous and law library, a large literary fund and the United States deposit of surplus revenue. All these resources in addition to the vast millions invested in canals and railroads and other avenues of inland commerce.

On the other hand we see set in the balance against these rich resources the territory of West Virginia, less than one-third of the old State, much of it broken into barren mountains and hills, no navigable streams penetrating it in every direction, no railroad but the Baltimore & Ohio, no public works or institutions, her lands mostly covered with unbroken forests and rewarding industry but grudgingly, no outlets in the interior for the little surplus existing, the people poor and subsisting by rough work in the woods and fields, pos-

sessed of no capital wherewith either to develop their localities or ameliorate their own condition in life in fact, their only wealth being for the most part their poor soil, their untiring perseverance and their indomitable love of liberty.

And yet, notwithstanding this great discrepancy between the condition and resources of the two States, Virginia assigns one-third of her funded and compounded debt to West Virginia to pay, simply because the latter has one-third of the territory and one-fourth the population formerly belonging to the whole State. And this, too, notwithstanding her papers have often proclaimed that West Virginia was a foster child of the old State, and as such dependent upon her bounty. This opinion we shall not stop to discuss, and we only refer to it as showing the inconsistency between the theory and practice of our Virginia friends. Supposing it to be correct, the explanation as to how it came about can never be made creditable to those who lavished all their favors on one section of the State, and withheld them from the other, and the vindication of the step taken by West Virginia during the war in separating from the old State consists largely of this traditional discrimination against her. And in this connection it may not be out of place to notice that the increase of population in West Virginia during the decade from 1860 to 1870 was of a character to still further vindicate the step taken, it being about thirty per cent. This large increase illustrates her onward march since her separation from her former foster parent, and tends to suggest how far in advance of her present position she really might have been had she received in the past anything more than "the crumbs that fell from the rich man's table."

We come now to the conclusion of our report. Having given our reasons why we dissent entirely

from the position of Virginia in reference to the debt, we proceed to state our own conclusions in regard to it as follows:

Statement A, as annexed to our report, shows that the bonded debt of Virginia, on the first of January, 1861, after all deductions, was $31,779,067.32.

The same statement also shows that all of said debt was expended within the present State of Virginia, with the exception of $2,784,329.29.

Statement E, shows that $328,706.22 was collected from counties in West Virginia after January 1st, 1861.

Statement F, shows that the amount of expenditures for all purposes in West Virginia was $3,343,929.29.

We are not able to say certainly what part of this expenditure was from the proceeds of State bonds, (and, therefore, a part of the State debt) and what part was appropriated from the regular receipts of the treasury. We have had access to no data that could determine the question. Our letter to the Second Auditor at Richmond sought information on this point in vain. But we have given Virginia the benefit of it all as a credit on her side of the account, although the resolutions under which we are acting contemplate nothing on the part of West Virginia but an assumption of her proportion of the bonded debt, inasmuch as both sections and particularly Virginia, received appropriations out of the ordinary receipts of the treasury.

We have charged West Virginia with all that we have found expended within her limits, viz: The amount of the funded debt created for improvements within her territory, the amount invested in her banks, the amount expended on the Lunatic Asylum at Weston, and the estimated value of the property known as the Lewisburg Law Library.

On the other hand we have credited her with her share of the estimated value of the public property and assets of Virginia, other than the property represented in the bonded indebtedness. This latter equalizes itself, and therefore does not enter into the account. Virginia has the property and owes the debt which it represents. We refer only to the public buildings, institutions, and other assets as given in statement G. As to West Virginia's share in these we can only venture an approximate estimate. The public buildings, the common property of the two States, paid for out of the general revenue, we have estimated at $3,875,000, as per statement G, and it would be reasonable we think to estimate West Virginia's interest in them at one-fourth on the basis of population.

The same statement shows that the surplus revenue of the United States deposited with the State under the act of Congress, June 23, 1836, gave Virginia $2,937,237.34, of which sum she appears to have received at least $1,932,809.33. This act assigned to each State its share of deposits on the basis of its representation in Congress, and Virginia having, in 1860, thirteen representatives, three of whom were from West Virginia, it would seem that three-thirteenths of that fund belonged to the latter.

To this share of the deposits, and her interest in the public property, we add, as per statement, her proportion of the Literary Fund. This fund at the date quoted in statement G, amounted to $1,509,583.16: As it was apportioned throughout the State on the basis of the white population, we follow that rule in assigning to West Virginia three-sevenths of it, that being her ratio of white population in 1860.

Upon the data thus ascertained and explained, we summarize the account between the two States as follows:

WEST VIRGINIA TO THE STATE OF VIRGINIA.

Dr.	For the amounts expended and invested in her territory as set forth in statement F		$3,343,929.29
Cr.	By one-fourth of the estimated value of the public buildings and other assets, as given in statement G	$968,750.00	
"	By three-thirteenths of the United States surplus fund as per same statement	446,032.92	
"	By three-sevenths of the Literary fund as per same	647,079.92	
"	By the amount collected in West Virginia after January 1, 1861, as per statement E	328,706.22	2,390,569.06
	Balance due Virginia		$953,360.23

This is the balance as we find it after a protracted examination of such sources of information as were available to us. And the ascertainment of it naturally brings our labors to a conclusion. We commend our investigations to Your Excellency's favorable consideration. From the beginning we realized that the results arrived at must necessarily be only proximate in their character, inasmuch as our sources of information were limited. Subsequent inquiry, under more favorable circumstances, may change the general result a few thousands for or against either State, but such a contingency is of course unimportant. The principle upon which the debt should be adjusted is the important point to settle. And it is to this point, as set forth in these pages, that we beg leave, through Your Excellency, to call the attention of the Legislature.

Very respectfully,
Your Excellency's most obedient servants,

J. J. JACKSON.
J. M. BENNETT.
A. W. CAMPBELL.

Report of the Senate Finance Committee of 1873.

STATE OF WEST VIRGINIA,
CHARLESTON, *December* 22, 1873.

The attention of the Committee on Finance has been repeatedly called by resolutions introduced in the Senate and otherwise, to the subject of Virginia's public debt and the share which it is equitable for West Virginia to bear and pay. The committee under these frequent promptings have been constrained to give the subject their most earnest and careful attention as a matter fraught with more than ordinary consequence to the State, and have come to a conclusion satisfactory to themselves, and it is believed that the conclusion of the committee will be approved by the judgment of the people interested, and will receive the sanction of any tribunal before whom it may be brought for adjudication.

It is necessary to a full understanding of this subject that reference be had to the treaty stipulations or fundamental conditions, by whatsoever name they may be called, between the representatives of the people of Virginia and the people desiring separation, by the creation of a new State, which led to the formation of a constitution, its adoption by the people and its approval by Congress, and the establishment of the State of West Virginia.

The ninth section of "an ordinance to provide for the formation of a new State out of a portion of the territory of this State," (Virginia) passed August 20, 1861, provided, that "the new State shall take upon itself a just proportion of the public debt of the commonwealth of Virginia *prior to the first day of January*, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordi-

nary expenses of the State government since any part of the debt was contracted; and deducting therefrom the monies paid into the treasury of the commonwealth from the counties included within the said new State during the same period."

Upon compliance with the conditions contained in the ninth section and here quoted the people within the counties now constituting West Virginia, were authorized to form a constitution to be presented to Congress for its approval and for the admission of the new State into the Union.

Accordingly a constitution was adopted by a convention of the people from the several counties now constituting the State of West Virginia and to carefully guard and secure the rights prescribed by Virginia as a condition precedent to the formation of the new State, a provision was incorporated into it to secure the exact fulfillment of the treaty stipulations as aforesaid.

By article eight, section eight of the constitution, it was provided that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State and that the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This subject has received a careful consideration by commissioners appointed by authority of this State, and while this committee see much to approve in the Report of the Debt Commissioners of West Virginia on this subject for their great research and the ability with which they handled the subject, considering the peculiar difficulties under which they labored, as shown in their report, and in the illustration of the many problems that may

rise in the discussion of this subject, yet this committee think the controlling question has not been discussed by the Commissioners by reason of the embarrassment surrounding their action; and the Committee beg leave to refer to the report which is appended hereto and marked No. 1.

In construing the legal principles involved in this matter, it may be assumed that a private creditor of Virginia cannot sue West Virginia for contribution; for that is prohibited by the Constitution of the United States; see article eleven of amendments United States Constitution which declares that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens or subjects of any foreign State." But notwithstanding this prohibition the third article extends the judicial power of the Supreme Court to controversies between two or more States. Under this provision of the Constitution it is within the power of Virginia to institute and prosecute any suit against West Virginia touching the controversies respecting the public debt.

If the conditions precedent to our admission as a State, prescribed by Virginia herself, be accepted as a true basis of adjustment and final settlement, Virginia's claims for expenditures can very properly be offset by our contributions.

Upon this basis the whole subject is one of easy solution, containing no other items than that of creditor or debtor with balances to be struck upon agreed principles. The legislative history of Virginia establishes beyond a doubt that the first act of assembly to create a debt or issue a bond was passed in the year 1821, and the executive records show that the first bond issued by the commonwealth of Virginia was in the year 1822.

From this latter period we date the commencement of our liability under the fundamental stipulations prescribed by Virginia for our separation, which were accepted by the people of this State, approved by Congress, and the President of the United States, as the head of the executive department, and subsequently affirmed by the Supreme Court of the United States, and may at this day be accepted by the public as firmly engrafted into obligations and rights as if the same were constitutional provisions emanating from the supreme power.

The concurrent approval, binding alike upon the people of Virginia and West Virginia, leads us to the following conclusions which are the results of a mathematical demonstration, founded upon public and official records, appropriate to determine how much of the bonded debt of Virginia existing prior to January, 1861, was expended within the limits of this State, and how much was contributed by the counties forming the same.

The report of the Debt Commissioners hereinbefore referred to shows that all State expenditures within this State prior to January, 1861, amounted to $3,366,929.29, and although it is apparent that bonds for quite a large amount of this sum were never issued, nevertheless the expenditures would seem to import an obligation upon our people to return every dollar which has been so contributed to the development of the territory of our State.

The committee have not entered into the tedious process of calculating the interest, for the obvious reason that there would be as much interest on our contributions to as upon the receipts of Virginia.

The committee have therefore assumed the foregoing sum of $3,366,929.29 as importing a debt upon West Virginia to be gathered and itemized from the report of the Debt Commissioners aforesaid.

From the amount of the foregoing expenditures must be deducted the moneys paid into the Treasury of the Commonwealth of Virginia, from the counties included in this State during the same period. For the sake of convenience the committee have charged to Virginia, not the whole contribution, but the surplus after deducting a just proportion of the ordinary expenses of the State government. Our total contributions from taxes to the State of Virginia in the year 1822, amounted to $63,000; and in that year the total of the expenses of the State government chargeable to us was $47,000, leaving an excess of $16,000, which would go to the liquidation of the debt created for expenditures within our midst.

This small surplus in 1822, by the process of an increased rate of taxation, and the increased value of the subjects to be taxed, the rate rising from 8 cents to 40 cents on every one hundred dollars in value, made the excess of our contributions to the treasury of Virginia in the year 1860 amount to $512,000, rejecting fractions.

Thus our contributions to the treasury of Virginia arising from taxes collected in that year amounted to $647,079.96. In the same year our proportion of the ordinary expenses of government amounted to $135,000, which left the surplus aforesaid of $512,079.96. It will be observed that the committee have referred only to the surplus in 1822 and in 1860. The surplus for the intermediate periods swell the aggregate of our contributions to $3,892,000 which is in excess of expenditures within our limits by $525,000.

It will thus be seen that our state is not indebted and the Committee confidently advance this statement, not only as containing the true basis of settlement between the two States, but it is supported by incontrovertible facts, by conditions precedent prescribed by Virginia under the restored govern-

ment which government has been approved as aforesaid by Congress, by the Executive and by by the Supreme Court of the United States.

Notwithstanding the satisfactory condition of our finances and our material resourves, the attention of the committee has been called to the fact that "West Virginia certificates" and "West Virginia bonds" are quoted at the marketable value of from five to fifteen cents on the dollar, in many of the stock exchanges and markets of the United States. This of course has a tendency to depreciate the just credit to which this State is entitled. For it is acknowledged that the credit of a State depends upon the value of its taxable property, the amount of its indebtedness and above all upon its punctuality in meeting its engagements. These quotations imply two things: first, that we owe a debt; second, that we are either unable or unwilling to pay the debt which beget a want of confidence in the minds of the public who are uninformed with respect to the true condition of West Virginia; and operate unjustly and injuriously upon us. It would seem to be enough for us to say, and we make the assertion without the fear of contradiction, that we owe no debt, that we have issued no bonds and our Constitution forbids the creation of a liability in the nature of a public debt; and with this assurance we cannot demand more nor expect less of all honorable stock brokers and bankers than the withdrawal from the list of indebted states the name of West Virginia.

"West Virginia certificates" and "West Virginia bonds" do not exist. No bonds have ever at any time been issued by West Virginia and we are prohibited from issuing at any time hereafter any bonds on the faith of this State. The bonds or certificates referred to were issued by Virginia, and West Virginia had no agency or participation therein.

In respect to the credit which our conduct and property would imply, we might be indifferent, but we have higher aims and more ennobling ambition. We desire to invite immigration, to cultivate our forests and to develop our mineral resources; this cannot be done with success, when men of thrift and capital are deterred from immigrating to and within our borders by reason of the persistent and unjustifiable misquotations of our credit. No one could be expected to invest capital within a State which has so far absorbed the substance of the people thereof that its good faith and obligations were only worth five cents on the dollar. West Virginia owes no debt, has no bonds for sale and asks no credit.

J. M. BENNETT,
Chairman.
JOHN W. GRANTHAM.
A. E. SUMMERS.
J. T. MCCLASKEY.
R. B. SHERRARD.
ELLIOTT VAWTER.

House Joint Resolution No. 10, Concerning the Virginia Debt.

(Adopted February 7th, 1895)

Resolved by the Legislature of West Virginia, That this Legislature hereby declines to enter into any negotiation with the debt commissioners, or commission appointed under a joint resolution, adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution.

House Joint Resolution No. 3.

(Adopted January 21, 1897.)

A resolution relating to the Virginia debt question.

Resolved by the Legislature of West Virginia, That it is the sense of this Legislature that West Virginia does not owe one cent of the so called "Virginia debt," and that this Legislature is opposed to any negotiations on that subject.

(H. J. R. No. 6.)

Joint Resolution No. 3.

(Adopted January 21, 1899.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia, That this legislature declines and refuses to take any action in regard to what is known as the Virginia debt, or Virginia deferred certificates, either by considering any propositions of adjustment or settlement, so called, or by authorizing the appointment of any committee or committees having for their purpose the consideration of the same; and that it is the sense of this legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt or certificates.

(S. J. R. No. 2.)

Joint Resolution No. 21.

(Adopted January 16, 1901.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia, That this legislature declines and refuses to take

any action in regard to what is known as the Virginia Debt, or Virginia Deferred Certificates, either by considering any proposition of adjustment for settlement so called, or by authorizing the appointment of any committee, or committees, having for their purpose the consideration of the same.

And, That it is the sense of the Legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt, or certificates.

(H. J. R. No. 3.)

Joint Resolution No. 3.

(Adopted January 21, 1903.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia, That it is the sense of this legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject. And, *further*, that this legislature declines, and most emphatically refuses, to take any action in regard to what is known as the Old Virginia debt, or Virginia deferred certificates, either by the consideration of a proposition of adjustment for settlement, or by authorizing the appointment of any committee or committees having for their object or purpose the consideration of same; and that it is the sense of this legislature that the State of West Virginia is in no way or manner obligated, either morally or legally, for the payment of any portion of the said debt or certificates. Nor do we owe any other state or territory in this Union.

(H. J. R. No. 7.)

Joint Resolution No. 3.

(Adopted January 20, 1905.)

Relating to the Virginia debt.

Resolved by the Legislature of West Virginia, That it is the sense of this legislature that the state of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject.

AN ACT to provide for the defense of the equity suit of the Commonwealth of Virginia against the State of West Virginia, now pending in the Supreme Court of the United States, and appropriate money for such purposes.

Passed February 4, 1907.

Be it enacted by the Legislature of West Virginia:

SEC. 1. That the attorney general of West Virginia be and he is hereby authorized and directed to defend the equity cause of the Commonwealth of Virginia against the State of West Virginia now pending in the Supreme Court of the United States; and the board of public works is hereby authorized to employ such attorneys and agents to assist the attorney general in the defense of such suit as in its judgment shall be necessary for the purpose.

SEC. 2. The attorney general is further authorized and directed to have made as soon as possible such searches and investigations as may be neces-

sary to ascertain all the facts, which in his opinion, are needed for the proper defense of said suit; and the attorney general is further authorized, if in his opinion it is necessary, to request of the officers of the said Commonwealth of Virginia reasonable access to the records of said Commonwealth so far as it may be necessary for such purpose; and to cause such copies and extracts of such records made as he or his associates may deem necessary for such purpose; and the attorney general is directed to make full and complete reports of his acts hereunder to the board of public works, from time to time, as he may deem proper or as requested by said board, and to the legislature at each session thereof during the pendency of this suit.

SEC. 3. To carry out the provisions of this act, the sum of fifty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, to be paid out of the treasury from time to time on the requisition of the board of public works.

SCHEDULE 2.

Paragraph XI of West Virginia's Answer, Pages 10-15, Inclusive.

XI.

This respondent for further answer to said bill says that she denies that the Commonwealth of Virginia made attempts at different times to ascertain and settle the equitable proportion of her public debt to be borne by West Virginia, upon the terms and in the manner contemplated by section nine of the ordinance adopted by the convention of the State of Virginia on the 20th day of August, 1861, in section eight of Article VIII of the Constitution of West Virginia, or in the manner prescribed by either of said instruments. The facts relating to the efforts of the Commonwealth of Virginia and the State of West Virginia to make an adjustment of the liability of the latter State, if any such liability exists, between the year 1865, when communication between the two States was re-established, and the year 1872, are as follows:

Prior to December, 1866, the Commonwealth of Virginia instituted a suit in equity against the State of West Virginia in this Honorable Court for a decision of the question whether or not the counties of Berkeley and Jefferson constituted a part of the State of West Virginia. This cause was not determined until the 6th day of March, 1871, on which day it was decided in favor of West Virginia. The effect of the pendency of this suit for over four years was to prevent a satisfactory adjustment of West Virginia's liability for the payment of an equitable proportion of the public debt of Virginia as provided in said ordinance of the Wheeling Convention because of the fact that

West Virginia's boundaries could not be known and therefore it could not be determined what amount of money had been expended within her limits for public works or other purposes prior to the 1st day of January, 1861.

Respondent avers that the Governor of West Virginia in his message to the legislature in January, 1866, recommended that Commissioners be appointed to settle with the commonwealth of Virginia respecting the said public debt; but no action was taken by the legislature of West Virginia of 1866 for the reason that the authorities of Virginia had made, at that time, no provision for a settlement, so far as was known to the authorities of West Virginia.

In his message to the legislature of West Virginia in 1867, the Governor again directed the attention of that body to the subject of the adjustment of the said public debt, stating that he was informed that Honorable Alexander H. H. Stuart of Virginia, together with two others, had been appointed under a resolution adopted by the General Assembly of Virginia: First for the purpose of securing a reunion of the two States, or secondly, for the purpose of adjusting the public debt and for a fair division of the public property. On the 28th day of February of the same year, the legislature of West Virginia by resolution declared that the people of that State were unalterably opposed to a reunion with the people of the commonwealth of Virginia, but expressed the willingness of the citizens of West Virginia to effect a prompt and equitable settlement between the States and directed the Governor as soon as the said suit in the Supreme Court of the United States, relating to the counties of Berkeley and Jefferson, had been disposed of, to appoint three commissioners on the part of West Virginia to treat with the commissioners of Virginia upon the matter of adjusting

the public debt of that State as provided in the ordinance of 1861, and the Constitution of West Virginia, adopted by the convention which assembled in November, 1861, and also requiring a report of their action to the Governor in order that the same might be communicated to the legislature of West Virginia for its action.

In January, 1868, the Governor of West Virginia informed the legislature in his annual message that the commissioners had not been appointed under the resolution because the suit in relation to the counties of Berkeley and Jefferson had not been disposed of. But in February of that year the Committee on Claims and Grievances of the House of Delegates, upon the petition of one of Virginia's creditors asking that the State of West Virginia provide for the payment of certain bonds of the State of Virginia of which he claimed to be the bona fide holder, reported that the settlement of West Virginia should be with the State of Virginia and not with the creditors of Virginia. And again in his message of 1869 to the Legislature of West Virginia the governor referred to the subject of the settlement of the public debt of Virginia and stated that commissioners had not been appointed by him up to that time owing to the fact that the suit between the States was still pending. The State of Virginia having, by an act approved February 18, 1870, provided for the appointment of three commissioners to treat with the authorities of the State of West Virginia, the governor of West Virginia, by communication dated February 24, 1870, advised the Legislature of West Virginia of the passage of that act by Virginia, and thereupon the Legislature of West Virginia, on the 1st day of March, 1870, appointed a joint committee of the two Houses of the Legislature to confer with the Virginia Commissioners and report to the Legislature, provided, however, that

such appointment of commissioners should not in any manner prejudice the rights of West Virginia involved in the suit in equity brought against her by the commonwealth of Virginia as hereinbefore stated, which was still pending in this court.

Afterwards, on March 3, 1870, the governor of West Virginia was authorized by the Legislature to appoint three resident citizens of the state to treat with the authorities of the Commonwealth of Virginia upon the subject of the proper adjustment of the public debt of that State, but it was provided that nothing in that action was to be construed as impairing the jurisdiction of West Virginia over the counties of Berkeley and Jefferson; but as there was an omission to make an appropriation to pay the expenses of West Virginia's commissioners, and the resolution authorizing their appointment was passed on the last day of the session of the Legislature, the Governor of West Virginia again in his message of 1871 stated that no appointment had been made owing to the lack of funds to pay the expenses of such commission.

Pending the efforts thus being made on the part of West Virginia, the general assembly of Virginia, on February 20, 1871, through the Governor of that State, tendered to West Virginia a proposition for an arbitration of the question relating to the public debt of that State, the arbitrators not to be citizens of either State, each State to appoint two arbitrators and the two to select an umpire if deemed necessary. This proposal made by the Commonwealth of Virginia was submitted to the Legislature of West Virginia on the 17th day of February, 1871, but on the 15th day of February, 1871, two days prior to the communication of this action of the General Assembly of Virginia, the Legislature of West Virginia had passed a joint resolution authorizing the Governor to appoint three disinterested citizens of the State to treat

with the authorities of the Commonwealth of Virginia upon the subject of the adjustment of the public debt of that State existing prior to the 1st day of January, 1861, to report on various matters relating to the creation of the debt; upon the investments held by the State of Virginia, and, providing, among other things, compensation for the commissioners and for the employment of an accountant or clerk.

The proposal of Virginia relating to arbitration was referred by the Legislature of West Virginia to a joint special committee of the two Houses, which committee reported a preamble and joint resolution rejecting the tender of arbitration made by the Governor of Virginia because the adjustment of the debt should be subject to the ratification of the legislatures of the two States and because citizen commissioners from both States would be necessarily more familiar with the circumstances attending the creation of the said debt and other questions connected therewith. The said joint resolution also invited the Commonwealth of Virginia to appoint three disinterested citizens of that State as commissioners, with authority to treat with the commissioners, theretofore authorized upon the part of West Virginia; but it was provided that their report should be subject to the approval and ratification of the legislature of the State of West Virginia and the General Assembly of the Commonwealth of Virgina; and the Governor of West Virginia was also directed by said resolution to communicate to the Governor of Virginia, without delay, certified copies of the preamble and resolution. Accordingly, in pursuance of this resolution, the Governor of West Virginia appointed three commissioners to negotiate with the State of Virginia for a settlement of West Virginia's equitable part of the public debt. After their appointment the said commissioners pro-

ceeded to Richmond, where all the accounts, vouchers and other evidences of the receipt and expenditure of the money were kept, and there spent some time in the examination of such documents as were accessible, but realizing the necessity for further and more accurate information than they could obtain unassisted, they addressed a communication to the second auditor of the Commonwealth of Virginia soliciting specifically the necessary information. To this request on the part of the Commissioners of West Virginia, the said second auditor made a reply in which he declined to furnish the information desired, a copy of which reply is herewith filed as "Exhibit No. 2" and made a part of this answer.

The failure and refusal of Virginia to co-operate with the said commissioners placed them at a great disadvantage in the examination of the records at Richmond, and they therefore obtained only such facts and figures as to enable them to make an imperfect report to the Governor of the State of West Virginia with reference to said public debt, showing the part of said public debt for which, in their opinion, according to such information as they could procure, West Virginia was liable.

Respondent avers that by reason of the inability of said commissioners to procure from the State of Virginia the necessary information concerning the public debt and other matters connected therewith, their report was not only very incomplete and inaccurate, but it appeared therefrom, that in making their investigations they wholly disregarded the provisions of the ordinance of the Wheeling Convention adopted August 20, 1861, and did not follow the method of settlement therein prescribed and respondent avers that for these and other reasons the conclusions of said commissioners were not agreed to or accepted by the Legislature of West Virginia; but subsequently the Senate of West Virginia proceeded to

make an investigation of the subject through its Finance Committee, of which J. M. Bennett, who was for eight years auditor of the old State of Virginia, and whose time expired when the city of Richmond was evacuated in 1865, was chairman. Said committee made a report on the 22nd day of December, 1873, from which it appeared that the State of West Virginia upon a settlement with the Commonwealth of Virginia based upon the provisions of section nine of the ordinance passed by the commonwealth of Virginia at the Wheeling Convention, did not owe to the said Commonwealth of Virginia anything whatever, but that, on the contrary, the said Commonwealth was indebted to West Virginia on account of said debt on the 1st day of January, 1861, in the sum of $512,000, not including interest. A copy of said report is filed herewith, and made a part hereof as Exhibit 3.

The State of West Virginia has never receded from the provisions contained in section nine of the Wheeling Ordinance with reference to the settlement of this respondent's just proportion of the public debt of Virginia, but has uniformly adhered thereto throughout her history as a State; and the resolutions adopted by her Legislature in recent years in which she declared that she did not owe the State of Virginia anything on account of said public debt were based upon the said report of the Senate Committee made in 1873 as aforesaid, and upon Virginia's persistent refusal to recognize the basis of settlement provided for in said ordinance as the just and true one upon which a settlement between the two States could legally and equitably be made.

After the proposition of the Commonwealth of Virginia to select arbitrators, which was declined by the State of West Virginia as hereinbefore stated the said Commonwealth of Virginia at no time signified her desire to settle with West Vir-

ginia the matters relating to West Virginia's proportion of said public debt until the adoption of a joint resolution approved March 6, 1894, after she had compromised and settled with her creditors and been released from all liability, which resolution provided for the appointment of a commission of seven members who were thereby authorized and directed to negotiate with the State of West Virginia for a settlement and adjustment of the latter State's part of the public debt proper to be borne by her, but which also expressly provided that such commission should not proceed with such negotiations until assurances should be received from the holders of a majority in amount of the certificates issued by Virginia under the acts hereinafter referred to, that they desired the said commission to enter into and undertake such negotiations and would accept the amount so ascertained to be paid by the State of West Virginia in full settlement of the one-third of the debt of the original State which had not been assumed by the State of Virginia; and it was also provided in said resolution that in no event should said commission enter into negotiations except upon the basis that Virginia was bound only for the two-thirds of the debt of the original State and which, as recited in said resolution she had already provided for as her equitable proportion thereof. Under the aforesaid resolution no negotiations were proposed to West Virginia until the year 1895 and then only upon the conditions prescribed in the joint resolution of 1894, which has never yet been repealed or modified in this respect; and negotiations were again offered by Virginia in 1906 but upon the same condition, that West Virginia should enter upon such negotiations with the admission on her part that the said Commonwealth of Virginia should only be liable for two-thirds of said debt, which was again declined by the said State of West Virginia.

SCHEDULE 3.

Pages 12-20, Inclusive, of West Virginia's Brief Upon the Hearing on the Merits Upon the Report of the Special Master.

Virginia Sought No Adjustment with West Virginia of Any Part of the Public Debt as Alleged in Her Bill.

With reference to the efforts at settlement between the two States touching the public debt, the bill makes this averment:

> "After the year 1865, and prior to the year 1872, attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settling of any kind was ever had between the two States in regard to this debt."
>
> Record, p. 10.

The answer of the defendant to this paragraph of the bill appears in the record at pages 149-154. The facts in relation to this matter are as follows:

The first governor of West Virginia, the Hon. Arthur I. Boreman, in his first message to the first legislature of that State, in discussing the financial condition and prospects of the new State, said:

> "The constitution provides that this State shall assume an equitable proportion of the debt of Virginia, prior to the first day of January, 1861, but no settlement can be made at present, and when it is made our 'equitable proportion' cannot be much."

In his message, dated January 16, 1866, to the legislature of that year, Governor Boreman, after quoting section 8 of article 8 of the constitution of West Virginia, says that the execution of this provision of the constitution had theretofore been impracticable on account of the existence of the war, but now that the war is over and peace is restored, he recommended the appointment of commissioners on behalf of the State to meet a like commission from Virginia.

Prior to December, 1866, Virginia instituted a suit in equity against the State of West Virginia in this Honorable Court for a decision of the question whether or not the counties of Berkeley and Jefferson constituted a part of the State of West Virginia. This cause was not determined until the 6th day of March, 1871, on which day it was decided in favor of West Virginia. During pendency of this suit no adjustment of West Virginia's liability, as provided in the ordinance, could be made, because until the boundaries of West Virginia were definitely determined it could not possibly be known what (1) amount of money was spent within the boundaries as State expenditures, (2) what her just proportion of the expenses of the State government was, nor (3) the amount paid into the State treasury from her counties, as provided by the ordinance.

In his message to the legislature of 1867, Governor Boreman refers to his recommendation of the appointment of commissioners, made in last message, to meet commissioners from the State of Virginia, and States that it had not been done because the authorities of Virginia had made no provision for such settlement. He states that he was informed that the Honorable Alexander H. H. Stuart of Virginia, together with two others, had been appointed under a resolution adopted by the general assembly of Virginia; first, for the pur-

pose of securing a reunion of the two States, or secondly, for the purpose of adjusting the public debt and for a fair division of the public property. On February 28 of the same year, the legislature of West Virginia by resolution declared that the people of that State were unalterably opposed to a reunion with the people of Virginia, but expressed the willingness of West Virginia to effect a prompt and equitable settlement between the two States, and directed the Governor as soon as the said suit in the Supreme Court of the United States relating to the counties of Berkeley and Jefferson had been disposed of, to appoint three commissioners on the part of West Virginia to treat with commissioners of Virginia upon the matter of adjusting the public debt as provided in the ordinance of 1861 and the constitution of West Virginia (W. Va. Compilation, vol. 1, pp. 444-6).

In January, 1868, the governor of West Virginia informed the legislature in his annual message, that the

> "Commissioners to treat with Virginia in regard to the public debt of that State, have not yet been appointed under the resolutions of that subject adopted by the legislature, February 28, 1867. The resolutions prescribe that the suit brought by Virginia in the Supreme Court of the United States, to recover jurisdiction over the counties of Berkeley and Jefferson, shall be finally disposed of before such appointment shall be made, which event has not yet transpired; and, if it had, there might still be a question whether such settlement should take place in the present condition of affairs in Virginia."

The "present condition of affairs in Virginia" referred to was doubtless that arising out of the

anomalous situation caused by the refusal of Congress to admit representatives from Virginia, from December, 1865, until the State was re-admitted into the Union in 1870. Congress, it appears, refused to recognize as valid the legislature that assembled under the Alexandria constitution of Virginia. Later, the State was placed under military government; a new constitution was adopted in 1868, ratified by the people in July, 1869, and Virginia re-admitted into the Union January 26, 1870. No negotiations could properly or safely have been carried on with Virginia during this period of "reconstruction," even if the suit to recover Berkeley and Jefferson counties had not been pending.

Again, in his message in 1869 to the legislature of West Virginia, the governor stated that commissioners had not been appointed by him up to that time, owing to the fact that the suit between the States was still pending. Virginia having, by an act approved February 18, 1870, provided for the appointment of three commissioners to treat with the authorities of West Virginia, the Governor of West Virginia, by communication dated February 24, 1870, advised the legislature of West Virginia of the passage of that act; and thereupon the legislature of West Virginia, March 1, 1870, appointed a joint committee of its two houses to confer with the Virginia commissioners and report to the legislature, providing, however, that such appointment of commissioners should not in any manner prejudice the rights of West Virginia involved in the suit then still pending in this court respecting the counties of Berkeley and Jefferson (W. Va. Comp., vol. 1, pp. 446-7).

On March 3, 1870, the Governor of West Virginia was authorized by the legislature by joint resolution to appoint three resident citizens of the State, to treat with the authorities of Virginia upon the subject of the public debt of that State,

but it was provided that nothing in that action was to be construed as impairing the jurisdiction of West Virginia over the counties of Berkeley and Jefferson (W. Va. Comp., vol. 1, pp. 447-8). As the resolution was passed on the last day of the session, and as there was omission to make appropriation of money to carry out its provisions, the Governor of West Virginia, in his message of 1871, stated that no appointment had been made owing to the lack of funds to pay the compensation and expenses of such commission.

Pending the efforts thus being made on the part of West Virginia, the general assembly of Virginia, through the governor of that State, tendered to West Virginia a proposition for an arbitration of the question relating to the debt, the arbitrators not to be citizens of either State, each State to appoint two, and an umpire to be chosen by the arbitrators if deemed necessary. This proposal was submitted to the legislature of West Virginia on February 17, 1871; but on the 15th, two days prior to the communication of this action of Virginia, the legislature of West Virginia had passed a joint resolution, authorizing the governor to appoint three disinterested citizens of the State to treat with the authorities of Virginia upon the subject of the adjustment of the public debt of that State existing prior to January 1, 1861, to report on various matters relating to the creation of the debt, upon the investments held by the State of Virginia, and, providing, among other things, compensation for the commissioners and for the employment of an accountant or clerk (W. Va. Comp., vol. 1, pp. 448-9).

The proposal of Virginia relating to arbitration was referred by the legislature of West Virginia to a joint special committee of the two houses, which committee reported a preamble and joint

resolution, rejecting the tender of arbitration because the adjustment of the debt should be subject to the ratification of the legislature of the two States, and because citizen commissioners from the two States would be necessarily more familiar with the circumstances attending the creation of the said debt and other questions connected therewith. This joint resolution also invited Virginia to appoint three disinterested citizens of that State as commissioners, with authority to treat with the commissioners theretofore authorized upon the part of West Virginia; but it was provided that their report should be subject to the approval and ratification of the legislature of the State of West Virginia and the general assembly of the commonwealth of Virginia. The Governor of West Virginia was directed by said resolution to communicate to the Governor of Virginia, without delay, certified copies of the preamble and resolution (W. Va. Comp., vol. 1, pp. 449-54). Accordingly, the Governor of West Virginia appointed three commissioners for the purpose aforesaid. This commission is known as the "West Virginia Debt Commission of 1871." After their appointment they proceeded to Richmond, where all the evidences of the receipt and expenditure of the money were kept, and there spent some time in the examination of such documents as were accessible. Realizing the necessity for further and more accurate information than they could obtain unassisted, they addressed a communication to the second auditor of Virginia, soliciting specifically the necessary information. To this request the second auditor made a reply, in which he declined to furnish the information desired, a copy of which reply is filed as "Exhibit No. 2" of defendant's answer (R., p. 166).

Soon after their appointment the commission addressed a letter to the Governor of Virginia,

notifying him of their appointment, their organization, and the duties put upon them, and requesting him to indicate at his earliest convenience what "channel of communication will be open to us." Nearly a month later they received from the Governor of Virginia a copy of a letter from him to the Governor of West Virginia, declining to recognize the West Virginia commissioners (W. Va. Comp., vol. 1, pp. 457-9). A few weeks later, in his message to the legislature, the Governor of Virginia "proceeds," to quote the language of the West Virginia Debt Commission, "to asperse the good faith of the State of West Virginia" (W. Va. Comp., vol. 1, p. 463). Having failed in their effort to obtain either the recognition or the co-operation of the governor or the second auditor of Virginia, the commission left Richmond, because, as they say in their report, "further stay was not likely to add to the scant information already gleaned by them from the public documents" (W. Va. Comp., vol. 1, p. 462).

The failure and refusal of Virginia to recognize, receive, or co-operate with the commissioners placed them at a great disadvantage, and they therefore obtained only such facts and figures as enabled them to make an imperfect report to the Governor of West Virginia with reference to the matters with which they were charged; and because of the incompleteness and inaccuracy of their report, and because it appeared therefrom, that in making their investigations they wholly disregarded the provisions of the ordinance of the Wheeling convention adopted August 20, 1861, and did not follow the method of settlement therein prescribed, their report was not adopted by the legislature of West Virginia. In 1873, the Senate of West Virginia made an investigation of the subject of the debt, through its finance committee, of

which J. M. Bennett, who was for eight years auditor of the old State of Virginia, and whose time expired when the city of Richmond was evacuated in 1865, was chairman. This committee made a report on December 22, 1873, from which it appeared that West Virginia upon a settlement with Virginia, based on the provisions of section nine of the ordinance, did not owe to Virginia anything whatever, but that, on the contrary, Virginia was indebted to West Virginia on account of said debt on January 1, 1861, in the sum of $512,000, not including interest. A copy of this report is printed in the record at page 166, as Exhibit 3 of defendant's answer.

A few weeks after the West Virginia Debt Commission of 1871 retired from Richmond after their fruitless endeavors there for recognition and cooperation, and after the Governor of Virginia had, in his message to the general assembly, questioned the good faith of West Virginia, Virginia passed her first funding act, that of 1871, in which she assumed two-thirds of the amount of the debt as her full share, and, *in violation and repudiation of section nine of the ordinance* of August 20, 1861, arbitrarily set aside the other one-third as West Virginia's portion. This is the more remarkable when it is remembered that she refers to and quotes from said section nine of the ordinance in the preamble of this act (R., p. 18). And to the same effect were the funding acts of 1879, 1882, and 1892. The joint resolution of the general assembly of Virginia, approved March 6, 1894, to provide for adjusting the portion of the debt to be borne by West Virginia, and creating the Virginia Debt Commission, provides (R., p. 49):

> "But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only

> for the two-thirds of the debt of the original State which she has already provided for as her equitable proportion thereof."

And the act of the general assembly of Virginia, approved March 6, 1900, is to the same effect, namely, that Virginia is liable for two-thirds only of the debt as her part thereof, which she has already provided for.

West Virginia, since the passage of the funding act of 1871—certainly since the adoption of the joint resolution of 1894,—could enter upon negotiations with Virginia upon no other basis. West Virginia must agree, as a preliminary to any such negotiations with Virginia, that Virginia was liable for two-thirds only of the debt, that this was her "equitable proportion," and that she has settled that. And what besides would it be held that West Virginia recognized or admitted or agreed to had she entered into negotiations with Virginia on such basis? This, that she had recognized that she was liable for the other third as *her* "equitable proportion;" for, it would be reasoned, that since it takes three-thirds to make a whole, and as Virginina was liable for two-thirds only, West Virginia must be liable for the other third. It is and was not reasonable to ask that West Virginia should place herself in such a position, especially as it would have set aside the agreement West Virginia made with reference to her portion of the debt and the method of ascertaining the same, contained in section nine of the ordinance.

West Virginia has never receded from the said provisions of the ordinance with reference to the settlement of her just proportion of the public debt of Virginia, but has uniformly adhered thereto throughout her history as a State. The resolutions adopted by her legislature in recent years, in which she declared that she did not owe

the State of Virginia anything on account of said debt, and would not negotiate with her concerning the same, were based upon the said report of the finance committee of 1873, upon Virginia's persistent refusal to recognize the basis of settlement provided for in said ordinance, and upon the conditions of negotiations dictated by Virginia in her said joint resolution of 1894 and said act of 1900.

After the said proposition of Virginia, made in 1871, to select arbitrators, which was declined by West Virginia, as hereinbefore stated, Virginia at no time signified her desire to settle with West Virginia the matters relating to West Virginia's proportion of said public debt, until after the adoption of said joint resolution approved March 6, 1894, whereby she had compromised and settled with her creditors and been released from all liability, which resolution provided that the commission thereby created should not proceed with negotiations with West Virginia until assurances should be received from the holders of a majority in amount of the certificates issued by Virginia under her funding acts, hereinbefore referred to, that they desired the commission to undertake such negotiations and would accept the amount so ascertained to be paid by West Virginia in full settlement of the one-third of the debt of the original State which had not been assumed by Virginia; and also that in no event should said commission enter into negotiations except upon the basis that Virginia was bound only for the two-thirds of the debt of the original State and which she had already provided for as her equitable proportion thereof. Under this resolution no negotiations were proposed to West Virginia until the year 1895, and then only upon the conditions prescribed in said joint resolution of 1894, which has never yet been repealed or modified in this respect.

Negotiations were again offered by Virginia in 1906, but upon the same condition, that is, that West Virginia should enter upon such negotiations with the admission on her part that Virginia should be liable for two-thirds only of the debt, which was again declined by West Virginia.

It will be clearly seen, therefore, that the allegations in the bill that "attempts were made at different times by the public authorities of both the commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportion of the common liability," is not supported to the extent and effect sought to be shown by the bill filed in this case.

It is averred in the bill that it was soon apparent that Virginia had by the act of March 6, 1871, assumed a heavier burden than she was able to bear, and other plans for the settlement of the debt were attempted to be made by the action of the General Assembly on March 28, 1879, and February 14, 1882, until at length, it is alleged, that a final and satisfactory settlement of the portion of the debt of the original State which Virginia should assume and pay was definitely concluded by the act of February 20, 1892. See R., pp. 21-47. Virginia files with her bill copies of each of these acts of her General Assembly as Exhibits Nos. 2, 3, and 4. It is also shown by the bill that Virginia, by her act of March 30, 1871, sought to fix her liability upon the basis of two-thirds of the original debt, and it is alleged that this was the intention of that act.

SCHEDULE 4.

INDEX TO THE METHOD OF COMPUTING INTEREST ON WEST VIRGINIA'S SHARE OF THE DEBT AS IT EXISTED JANUARY 1, 1861.

	Total bonds outstanding.	In literary and sinking funds and in the hands of Board of Public Works.	Net amount.
Group 1—6's	$9,729,326.36	$772,055.33	$8,957,271.03
2—5's	452,200.00	190,200.00	262,000.00
3—6's	350,000.00	254,500.00	95,500.00
4—6's	125,393.27	18,680.02	106,713.25
5—6's	8,861,864.33	773,689.18	8,088,175.15
6—6's	13,082,500.00	.....	13,082,500.00
7—6's	1,059,500.00	547,000.00	512,500.00
8—5's	1,815,204.50	.....	1,815,204.50
5's	5,000.00	5,000.00	.....
Total	$35,480,988.46	$2,561,124.53	$32,919,863.93
Accrued interest January 1, 1861			977,209.89
Total debt			$33,897,073.82
West Virginia's proportion			7,182,507.46
West Virginia's proportion, per cent of total debt			21.2%

Group 1—6% registered bonds redeemable at the pleasure of the General Assembly $8,957,271.03

Interest upon West Virginia's share of these bonds is computed from January 1, 1861, to January 1, 1913.

Group 2—5% registered bonds redeemable at the pleasure of the General Assembly 262,000.00

Interest upon West Virginia's share of these bonds is computed from January 1, 1861, to January 1, 1913.

Group 3—6% annuity on old James River stock 95,500.00

Interest upon West Virginia's share of this annuity is computed from January 1, 1861, to January 1, 1913.

Group 4—6% registered bonds redeemable in 20 years 106,713.25

No interest is charged against West Virginia on her share of these bonds.

Group 5—6% registered bonds redeemable in 34 years 8,088,175.15

Interest upon West Virginia's share of the bonds, each of the four loans listed in this group, is computed from January 1, 1861, to a date 34 years after the date of the act authorizing such issue.

Group 6—6% coupon bonds redeemable in 35 years 13,082,500.00

The interest upon West Virginia's share of these bonds is computed from January 1, 1861, to March 29, 1886, being 35 years after March 29, 1851, the date of the act authorizing this issue.

Group 7—6% registered bonds in lieu of coupon bonds redeemable in 35 years 512,500.00

Interest upon West Virginia's share of these bonds is computed from March 29, 1886, being 35 years after March 29, 1851, the date of the first act authorizing issue of coupon bonds for which these bonds were exchanged.

Group 8—5% sterling coupon bonds redeemable in 35 years 1,815,204.50

Interest upon West Virginia's share of these bonds is computed from January 1, 1861, to March 29, 1886, being 35 years after March 29, 1851, the date of the act authorizing this issue.

GROUP 1.

6% Registered Bonds Redeemable at Pleasure of General Assembly.

	Amount
Alleghany & Huntersville Road	$2,700.00
Alexandria Canal Co	232,400.00
Berryville & Charlestown Turnpike Co	6,400.00
Beverly & Fairmount Road	16,600.00
Blue Ridge Railroad Co	32,200.00
City Point Railroad Co	49,600.00
Charlestown & Point Pleasant Turnpike Co	20,800.00
Charlestown & Point Pleasant Turnpike Co	5,800.00
Cacapon & North Branch Turnpike Co	11,000.00
Cumberland Gap Road	61,600.00
Clarksburg & Buckhannon Turnpike Co	8,000.00
Coal River Navigation Co	4,000.00
Dismal Swamp Canal Co	16,500.00
Dragon Swamp Navigation Co	1,464.00
Exchange Bank of Virginia and Northwestern Bank of Virginia	440,257.00
Giles Fayette & Kanawha Turnpike Co	9,000.00
Goose Creek & Little River Navigation Co	7,000.00
Holliday Cove Turnpike Co	4,700.00
Hardy & Winchester Turnpike Co	15,500.00
Howardsville & Rockfish Turnpike Co	5,000.00
Hampshire & Morgan Turnpike Co	4,600.00
Ice's Ferry Road	1,358.00
Bank of Virginia	97,800.00
James River & Kanawha Co	1,773,431.59
James River & Kanawha Co	229,034.00
James River & Kanawha Co	1,205,100.00
Louisa Railroad Co	106,350.00
Louisa Railroad Co	166,150.00
Louisa Railroad Co	126,987.00
Lewisburg & Blue Sulphur Springs Turnpike Co	12,900.00
Lafayette & English Ferry Turnpike Co	1,000.00
Lynchburg & Buffalo Springs Turnpike Co	2,550.00
Little Stone Gap Road	8,500.00
Marshall & Ohio Turnpike Co	3,000.00
Moorefield & North Branch Turnpike Co	9,000.00
Morgantown & Bridgeport Turnpike Co	10,700.00
Moorefield & Alleghany Turnpike Co	1,040.00
Natural Bridge Turnpike Co	3,600.00
North Carolina & Wytheville Road	6,100.00
North Western Turnpike Road	100.00
North Western Turnpike Road	53,850.00
North Western Turnpike Road	6,600.00
North Western Turnpike Road	2,000.00
North Western Turnpike Road	5,904.73
Newmarket & Sperryville Turnpike Co	2,100.00
Ohio River & Maryland Line Road	9,100.00
Ohio River & Maryland Line Road	12,000.00
Orange & Alexandria Railroad Co	6,600.00
Petersburg Railroad Co	108,200.00
Portsmouth & Roanoke Railroad Co	147,580.00
Portsmouth & Roanoke Railroad Co	64,950.00
Pittsylvania, Franklin & Botetourt Turnpike Co	50,000.00
	9,090.10

Richmond & Petersburg Railroad Co.	175,900.00
Richmond & Petersburg Railroad Co.	49,700.00
Rappahannock Co.	12,900.00
Rappahannock Co.	95,000.00
Red & Blue Sulphur Springs Turnpike Co.	4,300.00
Rivanna Navigation Co.	6,000.00
Richmond & Danville Railroad Co.	378,000.00
Richlands to Kentucky Line Road	3,520.00
Rocky Mount Turnpike Co.	2,800.00
Rich Patch Turnpike Co.	1,100.00
Staunton & Parkersburg Road	1,900.00
Staunton & Parkersburg Road	16,510.00
Salem & Pepper's Ferry Turnpike Co.	4,300.00
Salem & Newcastle Turnpike Co.	3,875.00
South Western Turnpike Road	71,970.00
South Western Turnpike Road	123,162.00
Smiths River Navigation Co.	2,600.00
Tazewell Court House and Fancy Gap Road	3,420.00
Upper Appomattox Co.	37,300.00
Valley Turnpike Co.	232,413.00
Valley Turnpike Co.	22,954.00
Virginia & Maryland Bridge Co.	8,200.00
Virginia, Tennessee Railroad Co.	66,800.00
Winchester & Potomac Railroad Co.	133,935.00
Wheeling, West Liberty & Bethany Turnpike Co.	8,467.61
Weston & Fairmount Turnpike Co.	4,000.00
Weston & Gauley Bridge Turnpike Co.	5,000.00
Wellsburg & Bethany Turnpike Co.	1,700.00
Williamsport Turnpike Co.	800.00
Registered bonds	2,272,348.00
	$262,000.00

Elapsed time from January 1, 1861, to October 1, 1913 = 52 years, 9 months.

West Virginia's share, computed at 21.2% of the above	$1,808,941.46
Interest on West Virginia's share	6,010,149.72

GROUP 2.

5% Registered Bonds Redeemable at Pleasure of General Assembly.

Portsmouth & Roanoke Railroad Co.	$104,000.00
Portsmouth & Roanoke Railroad Co.	100,000.00
Richmond, Fredericksburg & Potomac R. R. Co.	5,000.00
Winchester & Potomac Railroad Co.	8,000.00
	$262,000.00

Elapsed time from January 1, 1861, to October 1, 1913 = 52 years, 9 months.

West Virginia's share, computed at 21.2% of the above	$55,544.00
Interest on West Virginia's share	146,497.30

GROUP 3.

JAMES RIVER ANNUITY, 6%.

James River Co.	$93,500.00

Elapsed time from January 1, 1861, to October 1, 1913 = 52 years, 9 months.

West Virginia's share, computed at 21.2% of the above	$20,246.00
Interest on West Virginia's share	64,078.59

GROUP 4.

6% REGISTERED BONDS REDEEMABLE IN 20 YEARS.

Staunton & Parkersburg, Loan No. 16, act of March 16, 1838	$106,713.25

No interest charged to West Virginia on this loan.

West Virginia's share, computed at 21.2% of the above	$22,623.21

GROUP 5.

6% REGISTERED BONDS REDEEMABLE IN 34 YEARS.

James River & Kanawha Co., act March 23, 1860	$2,492,400.00		
West Virginia's proportion @ 21.2%		$528,388.80	
Interest on West Virginia's share from January 1, 1861, to March 23, 1894			$1,053,332.51

Being 34 years after March 23, 1860, the date of the act authorizing this issue. Elapsed time, 33 years, 82 days.

(Loan No. 91.)

Registered bonds issued for redemption of warrants, act March 17, 1856	2,698,700.00		
West Virginia's proportion @ 21.2%		572,124.40	
Interest on West Virginia's share from January 1, 1861, to March 17, 1890			1,002,642.29

Being 34 years after March 17, 1856, the date of the act authorizing this issue. Elapsed time, 29 years, 76 days.

(Loan No. 93.)

Registered bonds, act March 18, 1858	398,900.00		
West Virginia's proportion @ 21.2%		84,566.80	
Interest on West Virginia's share from January 1, 1861, to March 18, 1892			158,364.86

Being 34 years after March 18, 1858, the date of the act authorizing this issue. Elapsed time, 31 years, 77 days.

(Loan No. 90.)

Registered bonds (coupons attached), Acts March 29, 1851 } May 25, 1852 }	2,498,175.15		
West Virginia's proportion @ 21.2%		529,613.13	
Interest on West Virginia's share from January 1, 1861, to March 29, 1885			770,306.41

Being 34 years after March 29, 1851, the date of the first act authorizing this issue. Elapsed time, 24 years, 88 days.

Totals	$8,088,175.15	$1,714,693.13	$2,984,656.07

GROUP 6.

6% Coupon Bonds Redeemable in 35 Years.

Coupon bonds, act of March 29, 1851	$13,082,500.00

Elapsed time from January 1, 1861, to March 29, 1886—25 years, 88 days. Being 35 years after March 29, 1851, the date of the act authorizing this issue.

West Virginia's share, computed at 21.2% of the above	$2,773,490.00
Interest on West Virginia's share	4,200,367.40

GROUP 7.

6% Registered Bonds Redeemable in 35 Years.

(Loan No. 92.)

Registered bonds in exchange for coupon bonds, act of March 18, 1850	$512,500.00

West Virginia's share, computed at 21.2% of the above	$108,650.00
Interest on West Virginia's share	164,547.17

GROUP 8.

5% STERLING COUPON BONDS REDEEMABLE IN 35 YEARS.

Sterling coupon bonds, act of March 29, 1851	$1,815,204.50
West Virginia's share, computed at 21.2% of the above	$384,823.35
Interest on West Virginia's share	485,666.31

SUMMARY.

	Net total amount of bonds outstanding.	Amount chargeable to West Virginia @ 21.2%.	Interest on West Virginia's share.
Group 1	$8,957,271.03	$1,898,941.46	$6,010,149.72
2	262,000.00	55,544.00	146,497.30
3	95,500.00	20,246.00	64,078.59
4	106,713.25	22,623.21	.....
5	8,088,175.15	1,714,693.13	2,984,656.07
6	13,082,500.00	2,773,490.00	4,200,367.40
7	512,500.00	108,650.00	164,547.17
8	1,815,204.50	384,823.35	485,666.31
	$32,919,863.93	$6,979,011.15	$14,055,962.56

SCHEDULE 5.

West Virginia Debt. The Amount West Virginia Should Pay on the Various Bases Shown in Point Seven.

BASIS—PAYMENTS MADE BY VIRGINIA ON ACCOUNT OF HER SHARE OF THE DEBT.

	From Exhibit No. 7 of the plaintiff's bill.	Estimated amounts accrued since 1906.	[Estimated] Oct. 1, 1913.
Interest paid	$35,551,642.82 to Feb. 1, 1906.	$6,300,000.00 to Feb. 1, 1913,	$41,850,000.00
Bonds taken up	10,771,791.49 to Sept. 30, 1905	about 1,328,100.00 to July 14, 1913	12,099,891.49
New bonds issued and outstanding	25,537,820.00 1905 report	*1,153,907.73	24,383,912.27
Total paid out by Virginia—about	71,861,253.31	.....	78,333,803.76

*Deduct.

The court found that Virginia's proportion was 76.51% and West Virginia's 23.5%.

$$\text{Ratio}\left\{\frac{.235}{.7651}\right\}=0.30715$$

Multiplied by	$78,333,803.76
Equivalent payment by West Virginia on her share	24,060,227.82

BASIS—CONSTITUTIONAL PLEDGE.

	6's.*	5's.*	Total.
West Virginia proportion, 1861...	$6,731,361.24	$451,146.22	$7,182,507.46
34 years' interest	204%	170%	
amounts to.....	13,731,976.93	766,948.57	14,498,925.50
Total.....	$20,463,338.17	$1,218,094.79	$21,681,432.96

* See table below.

BASIS—1871-1891 FUNDING ACTS OF VIRGINIA.

The court has decided that West Virginia owed $7,182,507.46 out of a total debt of $33,897,073.82 January 1, 1861.

Under the State of Virginia Refunding Plan in 1871, 34-year bonds bearing 6% and 5% interest from July 1, 1871, were offered par for par for principal and interest of that portion of the joint debt settled for by Virginia in new bonds bearing same rates of interest. 6% accrued interest was allowed on 6% bonds and 5% for 5% dollar bonds. (Sterling bonds were extended, not exchanged.)

From the Master's report it appears that the

Amount of 6's was.....	$31,767,939.21
Amount of 5's was.....	2,129,134.61
Out of a total of.....	$33,897,073.82

debt, as of January 1, 1861.

Proportion of 6's.....	93.71882%
Proportion of 5's.....	6.28118%

On this basis, the West Virginia share is:

6's	$6,731,361.24
5's	451,146.22
Out of a total of.....	$7,182,507.46

Interest from January 1, 1861, to July 1, 1871, at—

5%—10½ years.....	52½%
6%—10½ years.....	63%

Settlement of 1871 applied to West Virginia debt:

	Principal.	Interest.	Total.
5's	$451,146.22	$236,851.77	$687,997.99
6's	6,731,361.24	4,240,757.58	10,972,118.82
	$7,182,507.46	$4,477,509.35	$11,660,116.81

Interest at 5%, July 1, 1871, to July 1, 1891, 20 years, 100%; at 6%, 120%.

Amount settled for—

Principal as above.....		$11,660,116.81
Interest at 100% on 5's.....	$687,997.99	
Interest at 120% on 6's.....	13,166,542.58	
		13,854,540.57
Total.....		$25,514,657.38

Virginia offered 19/28 of principal and interest in new century bonds.

19/28 of $27,514,657.38	$17,313,517.51

The century bonds have paid—

2% for 10 years to July 1, 1901	20%
3% for 12 years to July 1, 1913	36%
	56%

Value of settlement on 1871-1891 basis, as of July 1, 1913:

Principal in 1891	$17,313,517.51
56% interest to July 1, 1913	9,695,569.81
Total	$27,009,087.32

BASIS 1871-1879-1891 FUNDING ACTS OF VIRGINIA.

Total amount of settlement of 1871, if applied to West Virginia debt (from preceding statement), July 1, 1871:

5's	$687,997.99
6's	10,972,118.82
	$11,660,116.81

In 1879 Virginia offered 50% for accrued interest and par for principal in 40-year bonds dated January 1, 1879, paying 3% for ten years, 4% for 20 years, and 5% for the last 10 years.

	Per cent.
Accrued interest July 1, 1871, to January 1, 1879—	
7½ years at 6% on 6% bonds	45
One-half accrued interest	22½
Principal	100
Total settled for	122½
7½ years at 5% on 5% bonds	37½
One-half accrued interest	18¾
Principal	100
Total	118¾

118¾% of $687,997.99	$816,997.61
122½% of $10,972,118.82	13,440,845.55
Total	$14,257,843.16

Principal of new 40-year bonds:

Accrued interest to July 1, 1891—10 years at 3%	30%
Accrued interest to July 1, 1891—2½ years at 4%	10%
Total	40%
40% of $14,257,843.16	$5,703,137.26

Amount settled for in 1891:

Principal as above	$14,257,843.16
Interest at 40%	5,703,137.26
Total	$19,960,980.42

In 1891 Virginia paid 19/28 of principal and interest in new century bonds.

19/28 of $19,960,980.42	$13,544,951.00

Century bonds have paid 56% interest to July 1, 1913.
Value of settlement on 1871-1879-1891 basis, as of July 1, 1913:

Principal in 1891	$13,544,951.00
56% interest to July 1, 1913	7,585,172.56
Total	$21,130,123.56

BASIS 1891 FUNDING ACT OF VIRGINIA

Virginia paid 19/28 of principal and interest.
Debt July 1, 1861 (see preceding statement):

5's	$451,146.22
6's	6,731,361.24
	$7,182,507.46

Interest, 30 years, July 1, 1861-July 1, 1891:

At 5%	150%
At 6%	180%

Amount to be settled for in 1891:

	Principal.	Interest.	Total.
5's	$451,146.22	$676,719.33	$1,127,865.55
6's	6,731,361.24	12,116,450.23	18,847,811.47
	$7,182,507.46	$12,793,169.56	$19,975,677.02

Settlement at 19/28 in century bonds	$13,554,923.69

Century bonds have paid 56% interest to July 1, 1913.
Value of settlement—unfunded bonds, 1891 basis:

Principal in 1891	$13,554,923.69
56% interest to July 1, 1913	7,590,757.27
	$21,145,680.96

BASIS 1871-1882 SETTLEMENTS.

Total amount of settlement of 1871, if applied to West Virginia debt (from preceding statement), July 1, 1871:

5's	$687,997.99
6's	10,972,118.82
	$11,660,116.81

In the 1882 settlement consols of 1871 were to receive 55% for principal and interest in Riddleberger bonds bearing 3%.

Interest July 1, 1871, to July 1, 1882:

11 years at 5%	55%	
11 years at 6%	66%	
55% interest on $687,997.99—5's		$378,398.89
66% interest on $10,972,118.82—6's		7,241,598.42
Total interest		$7,619,997.31
Principal of 1871		$11,660,116.81
Add interest		7,619,997.31
Total to be settled		$19,280,114.12
Settled at		53%
Amount July 1, 1882		$10,218,460.48
Interest to July 1, 1913, 31 years at 3%—93%		9,503,168.25
Amount by July 1, 1913		$19,721,628.73

BASIS 1871-1879-1882 SETTLEMENTS.

Amount of settlement of 1879 (from prior statement)	$14,257,843.10
Accrued interest January 1, 1879, to July 1, 1882—3½ years at 3%, 10½%	1,497,073.33
Total	$15,754,916.43
Settled for July 1, 1882, at	60%
In 3% Riddleberger bonds	$9,452,950.01
Interest to July 1, 1913—31 years at 3%, 93%	8,791,243.51
Total to July 1, 1913	$18,244,193.52

In the Supreme Court of the United States

OCTOBER TERM, 1913.

No 2. Original.

COMMONWEALTH OF VIRGINIA

VS.

STATE OF WEST VIRGINIA.

IN EQUITY.

RESPONSE OF THE DEFENDANT TO THE MOTION OF THE COMPLAINANT SUBMITTED IN THE ABOVE ENTITLED CAUSE.

And now, on this, the 13th day of October, 1913, comes the respondent, the State of West Virginia, by A. A. Lilly, Esq., the Attorney General of said State, and, for answer to the motion submitted in the above cause to

> "Proceed with a further hearing and determination of said case, and to settle and determine all questions left open and undetermined by its decision rendered on the sixth day of March, 1911,"

says that—

1. This Honorable Court, in its opinion in this cause

rendered on the 6th day of March, 1911, after having established the basis for determining the equitable proportion of the public debt of the original State of Virginia which was assumed by the State of West Virginia at the time of its creation as a State, suggested a conference between the two litigating States, to the end that a final decree might be entered by agreement without further contention.

2. The State of West Virginia, in a sincere effort to follow this suggestion, at the first possible moment after it had been made, under its Constitution and laws, undertook, through its Legislature, to establish a Commission competent to deal with the question without further contention, and in the spirit and temper that this Court indicated should characterize the situation.

Under the West Virginia Constitution, the sessions of the Legislature of that State are held biennially, and not annually. The provision of the State Constitution governing this question reads as follows:

> "The legislature shall assemble at the seat of government biennially, and not oftener, unless convened by the Governor."
> W. Va. Constitution of 1872, Art. VI., Sec. 18.

And the regular biennial session thereof in the year 1911 had come to an end prior to the delivery of the opinion of this Court in this cause on the 6th day of March, 1911, wherein the suggestion of a conference between the two States was made; so that a Commission looking to the execution of this Court's suggestion could not have been established by a joint resolution of the two Legislative Houses of the State during that session, and this was the only means, in the judgment of the officials of the State, by which the Court's suggestion could be effectuated.

It is true that the Honorable William E. Glasscock, then Governor of the State of West Virginia, did, by proclamation of the 18th day of April, 1911, convene the Legislature of said State in extraordinary session on the 16th day of May, 1911; but such proclamation did not embrace the con-

sideration, or authorize the appointment, of a Virginia Debt Commission, and, in consequence, under the Constitution of the State, the Legislature, when so convened, could not enter upon the business of appointing such Commission. The constitutional provision referred to reads as follows:

> "The Governor may, on extraordinary occasions, convene at his own instance the legislature; but, when so convened, it shall enter upon no business except that stated in the proclamation by which it was called together."
> W. Va. Constitution of 1872, Art. VII., Sec. 7.

The facts and circumstances surrounding this extraordinary session of the Legislature of West Virginia, and the reasons why the proclamation of the Governor convening it did not call for the appointment of a Virginia Debt Commission, were fully set forth and given in the response of the State of West Virginia to the like motion of the State of Virginia made and submitted in this cause on the 10th day of October, 1911, and were considered by this Honorable Court a sufficient justification for the State of West Virginia to postpone the appointment of a Virginia Debt Commission until the next regular session of the Legislature of that State, to be held in January, 1913.

3. At the time appointed by the Constitution of the State of West Virginia, its Legislature next met in regular session on the 8th day of January, 1913, and, during that session, that is to say, on the 21st day of February, 1913, a joint resolution was passed creating a Virginia Debt Commission, to be composed of eleven members, to be appointed by the Governor, and with authority and direction, among other things, "to negotiate with the Commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original Commonwealth of Virginia proper to be borne by the State of West Virginia." This joint resolution is correctly set forth in the second paragraph of the motion of the complainant filed herein, and

a copy thereof was transmitted by the Governor of West Virginia to the Governor of Virginia on the 12th day of March, 1913, with the accompanying promise that the Commission therein provided for would be appointed without unnecessary delay.

4. Within eleven days after the passage of the foregoing resolution, that is to say, upon the 4th day of March, 1913, the newly elected Governor of the State of West Virginia, the Honorable H. D. Hatfield, was inaugurated; and, notwithstanding the fact that he found martial law declared, and in existence, in a large mining district in the State, requiring the services of nearly the entire National Guard of the State, and calling for the devotion of almost his entire time, to the end that blood and bankruptcy might be avoided, which trouble was speedily contributed to during the latter part of the month of March by disastrous floods in the Ohio Valley, necessitating State aid and State protection, he was not unmindful of the necessity for the settlement of the Virginia debt question, and, after due reflection, in an effort to find suitable men for the consummation of this Honorable Court's suggestion, on the 19th day of April, 1913, appointed the eleven Commissioners required by the legislative resolution. Several of the Commissioners so appointed, after some hesitation and delay, declined, and it became necessary to seek other competent and suitable men. This was done without unnecessary delay, and the Commission was finally completed by the filling of vacancies on the 10th day of June, 1913, and, upon the same day, it was organized by the election of the Honorable John W. Mason as Chairman, and of the Honorable John T. Harris as Secretary.

Without the loss of any time, that is to say, upon the same day (June 10, 1913), the Governor of the State of West Virginia communicated by letter with the Governor of the State of Virginia, notifying him of the passage by the West Virginia Legislature of the foregoing resolution establishing the Virginia Debt Commission; that said Com-

mission had been organized, and would meet again on the 22d day of July, 1913, and would be pleased to meet the Virginia Commission at any time after that date, also requesting the Virginia Commission to state where it would be agreeable to hold a joint meeting of the two Commissions. Said letter enclosed not only a copy of the joint resolution, but also a list of the names of the members of said Commission. Said letter is truly set forth as "Exhibit A" to the motion of the complainant herein.

5. Pursuant to the adjournment of June 10, 1913, the West Virginia Commission again met at the City of Charleston, in the State of West Virginia, on the 22d day of July, 1913, and, on the 23d day of that month, adjourned to meet in the City of Washington, D. C., on the 24th day of July, 1913. Pursuant to this last adjournment, it met at Washington on the 24th day of July, and adjourned until the next day, at which time it met in joint session with the Virginia Commission.

6. At the joint conference of the two Commissions held at Washington on the 25th day of July, 1913, as aforesaid, the Virginia Commission took the position that, under the decision of this Court, the sole matter left open and remaining for consideration and adjustment by the two Commissions was "the amount of interest which West Virginia should pay upon the sum ascertained by the Court to be West Virginia's share of the principal" of Virginia's debt. This position is evidenced by the first paragraph of a resolution adopted by the Virginia Commission, and presented through its Chairman to the West Virginia Commission. In response to this resolution, the West Virginia Commission, through its Chairman, among other things, made the following statement:

> "From our standpoint and our reading of the opinion of the Supreme Court, other things are to be considered besides the question of interest."

Following this response of the Chairman of the West Virginia Commission, Mr. Randolph Harrison, selected as

spokesman for the Virginia Commission, made a lengthy statement, wherein he elaborated the Virginia position that nothing but interest should be considered, giving his reasons therefor, and embracing therein the construction placed by the Virginia Commission upon the opinion of this Court delivered upon the 6th day of March, 1911, in this cause; but, proceeding, he further said:

> "We also recognize the fact that it is competent for the two Commissions to consider the question of settlement of the entire controversy, precisely as we might do if there were no other question pending before us, and, if it is the pleasure of the West Virginia Commission to take up that question, and communicate to the Virginia Commission at this conference a proposition looking to a compromise settlement of the whole controversy, we will be glad to receive it, and will give it respectful and fair consideration."

In further response to the Virginia position, the West Virginia Commission adopted and presented to the Virginia Commission a resolution, wherein, among other things, it was set forth that, in the view of the West Virginia Commission, the then conference had for its object "a preliminary discussion and exchange of views, and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working program"; and it was proposed that each Commission should appoint a sub-committee consisting, respectively, of three of its own members, "with instructions to confer at the earliest convenient time and place, and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that should be submitted back to the two respective Commissions for consideration by each, and for final determination at a joint conference to be subsequently arranged between the Chairmen of the two Committees."

To the foregoing resolution the Virginia Commission, by like resolution, replied by agreeing to the appointment of a

sub-committee of three formed from each Commission, provided the consideration of said Committees should be confined to the following matters and things:

> "(1) The amount of interest which West Virginia should pay upon the sum ascertained by the Court in its decision to be West Virginia's share of the principal of the debt.
> (2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia."

To this the West Virginia Commission, through its Chairman, replied that it was anxious to proceed with the negotiations, but could not consent to agree in advance that only the question of interest should be considered, or that the West Virginia sub-committee should be required to first submit a proposition looking to a settlement, adding that it was willing "and anxious to approach a settlement upon equal terms, leaving, in the first instance, all questions of procedure to the said sub-committees." It further answered that it did not feel sufficiently acquainted with the questions involved—for reasons theretofore stated—to submit a proposition at that time, and asked that the whole subject-matter be submitted to the sub-committees, "with the understanding that the sub-committees be required to report their action for approval to their respective commissions at a time in the near future to be now agreed upon."

The Virginia Commission replied that it felt "constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed."

As a consequence, the sub-committees were not appointed, and, after expressing regret, the West Virginia Commission suggested a future meeting of the joint Commissions, to which the Virginia Commission, after reiterating its former position, and stating that it could not recede

therefrom, agreed, and suggested an adjournment until August 12, 1913, at the New Willard Hotel, Washington, provided the future conference should not embrace a consideration *de novo* of the entire case, and the West Virginia Commission agreed to the time and place of adjournment, but insisted that the adjournment should be "without terms and conditions, and without prejudice to the rights of either party." Thereupon, the conference was adjourned to meet on Tuesday, August 12, 1913, at ten o'clock, A. M., at the New Willard Hotel, Washington, D. C.

The matters and things hereinbefore in this paragraph alleged are set forth in detail in the record of the "Proceedings of a Joint Conference between the Virginia Debt Commissions of the States of Virginia and West Virginia," printed herewith as a part hereof, and marked "Exhibit A."

7. After the West Virginia Commission returned home, the Chairman thereof, through correspondence with its various members, discovered that it would not be prepared, on account of shortness of time, for the adjourned joint conference of the two Commissions to be held on August 12th, and, thereupon, on the 9th of August, he telegraphed to the Chairman of the Virginia Commission as follows:

> "HON. JOHN B. MOON,
> *Charlottesville*, Va.
> Certain our Debt Commission will not be ready for meeting Tuesday. Members have not had time enough for investigation. We meet Charleston Monday, and will have to ask that time be extended to a day in near future. Under these circumstances, I suggest Washington meeting be now recalled.
>
> JOHN W. MASON."

8. The West Virginia Commission convened again at Charleston, West Virginia, on the 11th day of August, 1913, and the Chairman reported his telegram to Mr. Moon, and, having received no reply thereto, was directed by the Commission to at once communicate with Mr. Moon by tele-

phone. This he did, and Mr. Moon then informed him that he had notified the members of the Virginia Commission that the August 12th meeting had been recalled, and Mr. Mason suggested that a time be fixed for another meeting in the near future, to be arranged by the Chairmen of the two Commissions, to which Mr. Moon assented.

At this same meeting, the West Virginia Commission adopted the following resolution:

> "*Resolved*, That a sub-committee, consisting of Messrs. Ord, Young and Ice, is hereby appointed to co-operate with the Attorney General and the associate counsel in this case in drawing up the necessary data and statistics as a basis for propositions to be made to the Virginia Commission, and that either one, two or all of said sub-committee at their convenience, are authorized to perform the work assigned them in connection with this matter."

In pursuance of the foregoing resolution the said sub-committee entered upon its duties, and, after making careful investigation, met in the City of Charleston on the 18th day of September, 1913, and adopted the following resolution:

> "WHEREAS, The sub-committee of the West Virginia Commission of the Virginia Debt Commission appointed to formulate a proposition of settlement to be submitted to the Virginia Commission find it necessary to ascertain certain facts and figures not in the record, and not available from the record, which will take some time, therefore, be it
>
> *Resolved*, That the Honorable John W. Mason, Chairman of the West Virginia Commission, be requested to inform the Virginia Commission, by a letter directed to its Chairman, Mr. Moon, that we are diligently at work on a proposition to be submitted to the Virginia Commission, but that further time will be needed to complete it."

In obedience to the foregoing resolution, the Chairman

of the West Virginia Debt Commission, on the 22d day of September, 1913, addressed and mailed the following letter to the Hon. John B. Moon, Chairman of the Virginia Debt Commission:

"FAIRMONT, WEST VIRGINIA, September 22, 1913.

HONORABLE J. B. MOON,

Chairman Virginia Debt Commission,

Charlottesville, Virginia.

MY DEAR SIR:

I am instructed by a sub-committee of the West Virginia Commission, appointed by the Governor of that State to negotiate a settlement, in accordance with the suggestions of the Supreme Court of the United States, of the controversy between the States of Virginia and West Virginia, relative to the settlement of the Virginia debt, to say to you, and through you to the Virginia Commission, that the West Virginia Commission has in course of preparation a proposition (looking to a settlement) to be presented to your Commission at the earliest moment; but that it will yet require some three or four months time in which to put said proposition in final and intelligent form. I cordially endorse the recommendation of the sub-committee, and hope it will be agreeable to your Committee to consider the same favorably.

In the meantime, if your Commission should desire to submit any suggestions or propositions to this Commission looking to the same end, we would gladly, and without unnecessary delay, consider the same.

With great respect I remain yours, etc.,

JOHN W. MASON,

Chairman Virginia Debt Commission."

To the foregoing letter, Chairman Moon, under date of the 24th of September, 1913, made reply, and, among other things, said:

"I am sure you will pardon my adverting to the fact that more than two years and a half ago (March 6th, 1911), the Court referred the interest

question and any other matter of detailed computation to the two States for their possible agreement, and we sent a sub-committee to your State, who returned without being able to accomplish any results.

Our Commission, therefore, felt constrained to ask for some conclusion of the question of interest involved in the controversy, and requested our Attorney General to act accordingly, though I do not know that this would preclude an agreement, if one could be arrived at in the premises."

9. It appears, therefore, from the foregoing facts and from the motion filed herein by the complainant, which is dated the 22d day of September, 1913, that, upon the very day that the Chairman of the West Virginia Commission was mailing his letter aforesaid to the Chairman of the Virginia Commission, wherein he stated "that the West Virginia Commission has in course of preparation a proposition looking to a settlement to be presented to your Commission at the earliest moment," but requesting a little more time, the Attorney General of Virginia was preparing the present motion to be presented to this Honorable Court, for the purpose, presumably, of ending the negotiations, and renewing the controversy in Court, contrary to the spirit of the suggestion of this Honorable Court as the same is construed and interpreted by this respondent. The motion was served herein upon the 26th day of September, 1913.

The respondent prints herewith a true copy of the proceedings of the West Virginia Commission referred to in the foregoing paragraphs eight and nine as a part hereof, and marks the same "Exhibit B."

10. This respondent, further answering the motion, says that, at the time the letter aforesaid of the 22d of September, 1913, was written by the Chairman of the West Virginia Commission to the Chairman of the Virginia Commission, requesting further time, and stating that a proposition looking to a settlement was in course of preparation by the West Virginia Commission, the sub-committee of the

POOR COPY

West Virginia Commission was diligently and faithfully at work gathering data upon which to base its proposition of settlement to the Virginia Commission, and is still at work thereon, notwithstanding the service of the notice of the motion herein.

It further says that said letter of the 22d of September, 1913, was prepared and sent to the Chairman of the Virginia Commission in the utmost good faith, and did not seek unnecessary delay, in the judgment of the West Virginia Commission.

11. It is further respectfully submitted that the West Virginia Commission, as it now stands, was not appointed until the 10th day of June, 1913, a period of only four months ago; that it was not prior to its appointment connected in any way with the management or conduct of the litigation in this case, and was, and still is, to a certain extent, unfamiliar with the history and details of the controversy, including the litigation springing thereout; that it should not, in a matter of this importance, proceed with undue haste; that its full membership did not even receive printed copies of the opinions of this Honorable Court delivered in this cause upon the 6th day of March, 1911, and the 30th day of October, 1911, respectively, until about the 1st day of August, 1913, at which time this respondent printed, for the benefit and information of its Commission, a volume, consisting, among other things, of the opinions of this Honorable Court, and the report of the Master in this cause; that, upon the other hand, the present Virginia Commission has been in existence for many years, and has been, as this respondent is informed, identified with and in charge of the present litigation between the two States, and naturally requires less time to properly prepare for the settlement of this controversy in accordance with the suggestion of this Honorable Court than does the Commission of this respondent.

It is also true that the present Attorney General of the State of West Virginia, who, under the Constitution and laws of that State, is its chief law officer, was not inducted

into office until the 4th day of March in the present year, and during the early months of the present State administration was largely occupied on behalf of the State with the strike and flood difficulties set forth in the fourth paragraph hereof, thereby abbreviating the time that he might otherwise have devoted to assisting and advising the Commission herein. He was never before his recent election to his present office connected in any way with the Virginia debt question or litigation, and, like the Commission and other officers of this respondent, was under the necessity of informing himself in respect thereto. He has been, and is now, diligently at work with the Commission of this respondent and has but one object in view, and that is the consummation of the suggestion of this Honorable Court made to the parties in its opinion of March 6, 1911.

12. This respondent further says that, while its Commission and the sub-committee thereof, together with the Governor and Attorney General of the State, were diligently and conscientiously using every effort which they reasonably could use, and while they were exercising due diligence and were proceeding with all deliberate speed to carry into execution the requirements imposed upon them by the joint resolution of the Legislature of the State of West Virginia of February 21, 1913, and while they were formulating a proposition to be made to the Virginia Commission, as requested by said Commission at the Washington conference hereinbefore referred to, to the end that the matters in controversy between the two States might be settled in accordance with the suggestion of this Honorable Court, made in its opinion rendered March 6, 1911, as interpreted by its opinion rendered October 30, 1911, the Commonwealth of Virginia served notice of the present motion.

13. Your respondent further says that unless the said controversy is amicably adjusted and settled through the agency of its Commission, by negotiations with the Virginia Debt Commission, it will be powerless to do anything towards such adjustment and settlement, as its Legislature is not now in session and there is no officer, agent or repre-

sentative of West Virginia empowered to adjust and settle said controversy or to conduct negotiations to that end, except said Commission provided for and appointed under and by virtue of said joint resolution; and it further represents that since the appointment of its said Commission, it has been relying upon it so to conduct negotiations with the Commonwealth of Virginia as to consummate such an adjustment and settlement of said controversy as to commend the result of its negotiations to the favorable consideration of the Governor and the legislative branch of its government, and thus terminate said controversy to the satisfaction of her people and the Commonwealth of Virginia, and upon the principles of honor and justice to both States, and in fairness to the holders of the debt for whose benefit this controversy is still pending.

14. In view, therefore, of the foregoing considerations, it is respectfully submitted that the motion of the complainant is premature, and ought not to prevail; that no further action should be taken by this Court until the West Virginia Commission has had a reasonable opportunity to present its intended proposition of settlement to the Virginia Commission.

All of which is respectfully submitted.

STATE OF WEST VIRGINIA,

By A. A. LILLY,

Attorney General.

DEFENDANT'S EXHIBIT "A"

Proceedings of a Joint Conference

BETWEEN THE

VIRGINIA DEBT COMMISSIONS

OF THE

STATES OF VIRGINIA AND WEST VIRGINIA

HELD AT

THE NEW WILLARD HOTEL

WASHINGTON, D. C.,

July 25th and 26th, 1913

Proceedings of a Joint Conference of the Virginia and West Virginia Debt Commissions.

The Virginia and West Virginia Debt Commissions met in joint conference in the "Gridiron Room" of the New Willard Hotel at 11 o'clock a. m., July 25th, 1913, pursuant to call of their respective Chairmen and there were present:

On the part of Virginia:—Messrs. Moon, (Chairman) Harrison, Rhea, Wickham, Flood, Brown, Downing, and Joseph Button, Secretary.

On the part of West Virginia:—Messrs. Mason, (Chairman) Wells, Zilliken, Lenhart, Ice, Young, Chilton, Boreman, Hamilton, Ord, Miller, and John T. Harris, Secretary.

The Chairmen of the two Commissions presided jointly over the conference meeting.

CHAIRMAN MOON: On behalf of the Virginia Commission we have prepared some preliminary resolutions to see if we can get at an adjustment of this matter and try to reach an agreement. The first resolution we passed is this:

"*Resolved*, That it is the sense of this Commission that in the Conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the Court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

CHAIRMAN MOON: The second resolution adopted by our Commission is as follows:

"This Commission desiring to carry out in good faith the suggestions made by the Supreme Court as to securing an amicable adjustment of the amount of interest which should be paid by West Virginia upon the principal of the debt as ascertained and decided by the court, and realizing that it is not the desire of Virginia nor was it the intention of the Supreme Court that Virginia should ask or demand the full or legal amount of interest upon the principal debt as ascertained in the decision of the Court, but that there should be concessions made upon both sides, such as comport with justice and the honor and dignity of the two States; and

WHEREAS, The joint conference to be held today between the Commissions of Virginia and West Virginia was invited by the authorities of West Virginia, presumably for the purpose of carrying out in good faith the decision and suggestion of the Supreme Court of the United States.

Therefore, be it resolved, That this resolution, together with all

other resolutions adopted by this Commission at its present session, which may be pertinent, be presented by the Chairman of this Commission, to the Commission of West Virginia at the joint conference to be held today, and that the Commission of West Virginia be respectfully requested to communicate to this Commission, what, in their judgment, would be a fair and just settlement of the interest to be paid by West Virginia upon the principal amount as ascertained in the opinion and decision of the Supreme Court of the United States."

CHAIRMAN MOON: These two resolutions we lay before you, gentlemen, and ask your consideration of them. I will state that our Commission has designated Hon. Randolph Harrison, one of our members, to be spokesman for us and to give such advice as may be desirable to present to you. He has a great deal of information on the subject, and has had a great deal of experience in connection with the case, and is well qualified to submit it.

CHAIRMAN MASON: Under these resolutions you have presented, gentlemen, the only question for the West Virginia Commission to consider would be the question of interest. From our standpoint, and our reading of the opinion of the Supreme Court, other things are to be considered besides that question of interest.

This Commission has only been in existence about sixty days—or not quite that long; it was appointed on the 10th day of June—and we haven't had time on our part to go over this matter as fully as you gentlemen have who have been familiar with the case for many, many years. We have a general idea of the subject matter but have not studied it as we should study it and as we are endeavoring to study it.

We meet you with a great deal of pleasure, gentlemen, and with the sincere idea and desire that this long unsettled, vexed question between the two states may be settled. We think it ought to be settled in some way; but we have had the idea, and have it now, that the opinion of the Supreme Court leaves open more than the question of interest, or whether we should pay any interest whatever.

In the first place, it is not a final judgment; and in the second place the court indicates very clearly in its opinion that there may be adjustments to be made by the different parties; so that if you limit the discussion and the investigation simply to the question of interest, gentlemen, we will probably have some trouble right at the start,

if more than that is not to be discussed and considered in attempting to make a settlement of this matter.

CHAIRMAN MOON: Mr. Chairman, do you think you will be ready to make any reply to these resolutions any time to-day, or would you want more time to consider them?

CHAIRMAN MASON: I think I can say for our Commission now, that we would want to consider, in this attempted settlement, more than the question of interest, or whether there is to be any interest, and, if so, the amount of it.

At their own request certain persons representing the certificate holders and bondholders were here admitted and were present at the meeting.

MR. FLOOD: As Mr. Harrison has been selected by our Commission as its spokesman, I think it would be well to hear from him.

Mr. Harrison then addressed the joint conference at considerable length upon the text of the resolutions adopted by the Virginia Commission as heretofore read by Chairman Moon and submitted to the West Virginia Commission.

After which the joint conference took a recess to reconvene at the call of the respective Chairmen, and the West Virginia Commission took time to consider the resolutions submitted by the Virginia Commission and recessed until 2 o'clock p. m.

AFTERNOON SESSION—WEST VIRGINIA COMMISSION.

The West Virginia Commission re-assembled in the "Cabinet Room" of the New Hotel Willard at 2 o'clock p. m., and after a full and free discussion of the resolutions submitted this morning by the Virginia Commission adopted the following:

REPLY OF THE WEST VIRGINIA COMMISSION TO THE VIRGINIA COMMISSION'S RESOLUTION NO. 1.

"The Debt Commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the Debt Commission on the part of the State of Virginia:

'*Resolved*, That it is the sense of this Commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the

court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt.'

In reply thereto says: that in its judgment the interst, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the Joint Commission, now in session, should consider."

REPLY OF THE WEST VIRGINIA COMMISSION TO THE VIRGINIA COMMISSION'S RESOLUTION NO. 2.

"WHEREAS, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore be it

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-committee of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the Chairmen of the two Committees; but nothing herein contained shall prejudice the rights of either party."

Mr. Young offered the following, which was adopted:

Resolved, That the Chairman of this Commission be directed to communicate these two resolutions to the Chairman of the Virginia Commission with the request that the Virginia Commission indicate, at as early an hour as possible, their acceptance or rejection of the second resolution we have adopted.

Subsequently, the Chairman reported to the Commission that he had performed the duty assigned him.

At the hour of 5:30 p. m. Mr. Moon, Chairman of the Virginia Commission, appeared and made the following statement:

"I am directed by the Virginia Commission to acknowledge the receipt of your communication, through the Chairman, and to say that we are now engaged in formulating a reply to it. We make the suggestion that we assemble in joint session at a quarter to 8 o'clock, if agreeable to your Commission."

Whereupon,

On motion of Mr. Chilton the Commission then took a recess until 7:45 o'clock p. m. to again go into joint session with the Virginia Commission.

Joint Conference—Evening Session.

The two Commissions re-convened in joint session in the "Cabinet Room" of the New Willard Hotel at 7:45 o'clock p. m., all the members being present and the Chairmen of the two Commissions jointly presiding.

CHAIRMAN MOON: Gentlemen of the West Virginia Commission: Our Commission has made the following reply to your resolutions, in writing, received by us this afternoon:

"The Virginia Commission, having received the following communications from the West Virginia Commission, numbered for convenience 1 and 2:

> '(1) The Debt Commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the Debt Commission on the part of the State of Virginia:
>
> "*Resolved*, That it is the sense of this Commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the Joint Commission, now in session, should consider.

(2) WHEREAS, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore be it

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-committee, of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters involved, and endeavor to reach a final proposition that shall be submitted back to the two respective Commissions, separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the Chairmen of the two Committees; but nothing herein contained shall prejudice the rights of either party.'

Respectfully replies that in its judgment the language of the Supreme Court does not admit of the foregoing construction to the effect that 'the interest, if any, is not the only question,' which the joint conference should consider.

The Court said: 'Among other things there still remains the question of interest.' The Virginia Commission understands this language to mean that there were 'other things' to be considered by the Court before it reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia Commission, being of opinion that there is no ambiguity in the opinion of the Court, and that no conference as to any other matter than the question of interest is called for between the two Commissions, respectfully adheres to the interpretation of the opinion and decision of the Court as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two Commissions.

It regrets, however, that the West Virginia Commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

The Virginia Commission further regrets that the West Virginia Commission has not seen fit to indicate or suggest an amount, the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Vir-

ginia, as the Virginia Commission specifically declared, through Mr. Harrison, that such proposal would receive most careful and respectful consideration if the West Virginia Commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia Commission that a sub-committee of three should be formed from each Commission, with instructions to consider all matters involved, and so forth, the Virginia Commission respectfully says that it is agreeable to the appointment of such sub-committees provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the Court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia.

Provided, further, that said sub-committees be directed to meet on the ———— day of ————, 1913, and report to an adjourned meeting of this joint conference to be held on the ———— day of ————, 1913."

CHAIRMAN MASON: I take it, gentlemen, that that is only a qualified acceptance of the proposition made and that we would want to discuss it further as to whether or not we will want to eliminate from the report to be made by the sub-committee all questions except the payment of interest; and, further, that the proposition to pay a part shall come from West Virginia. That, I say, we will want to consider.

I hope, gentlemen, you will feel free to simply leave the question open so that the sub-committee when it meets may discuss it, and make such report as it shall deem proper, without your insisting upon your notion about it; but whether we want to appoint a sub-committee under those restrictions as you have them there, I will say that we shall have to have time to think about it. I regret very much that you limit it in that way.

CHAIRMAN MOON: We would suggest a separate session of the Commissions to give you an opportunity to consider that question.

CHAIRMAN MASON: Yes; it will take a few moments.

CHAIRMAN MOON: We will give you an opportunity to go into

executive session to determine upon that point. Our Commission is up in Room 601, if you should want us.

Whereupon,

The Virginia Commission then retired, and after some time spent in discussion the West Virginia Commission formulated the following in response to the last foregoing communication:

"The West Virginia Commission has received the following statement from the Virginia Debt Commission:

'The Virginia Commission, having received the following communications from the West Virginia Commission, numbered for convenience 1 and 2:

"(1) The Debt Commission on the part of the State of West Virginia having this day been handed the following resolution adopted by the Debt Commission on the part of the State of Virginia:

'*Resolved*, That it is the sense of this Commission that in the conference to be held this day with the West Virginia Commission, the subject for consideration and adjustment, as indicated by the court in its decision in this case, is the amount of interest which West Virginia should pay upon the sum ascertained by the court to be West Virginia's share of the principal of said debt."

In reply thereto says: That in its judgment the interest, if any, which should be paid to the State of Virginia as stated in the foregoing resolution, is not the only question, as indicated by the language used by the Supreme Court of the United States in its opinion, which the Joint Commission, now in session, should consider.

(2) WHEREAS, The view of the Virginia Debt Commission on the part of West Virginia is that the present conference is for a preliminary discussion and exchange of views and for the added purpose of arranging a method for a more complete consideration of the matters involved, and adjusting a working programme; therefore be it

Resolved, That the Virginia and West Virginia Commissions shall each appoint a sub-committee of three members, with instructions to confer at the earliest convenient time and place and to thoroughly discuss all matters in-

volved, and endeavor to reach a final proposition that shall be submitted back to the two respective commissions separately, for consideration by each, and for final determination at a joint conference to be subsequently arranged between the Chairmen of the two Committees; but nothing herein contained shall prejudice the rights of either party."

Respectfully replies that in its judgment the language of the Supreme Court does not admit of the foregoing construction to the effect that "the interest, if any, is not the only question," which the joint conference should consider.

The Court said: "Among other things there still remains the question of interest." The Virginia Commission understands this language to mean that there were "other things" to be considered by the Court before it reached a final decree, and that among these other things the only one referred to the two States for adjustment was the question of interest.

The Virginia Commission, being of opinion that there is no ambiguity in the opinion of the Court, and that no conference as to any other matter than the question of interest is called for between the two Commissions, respectfully adheres to the interpretation of the opinion and decision of the Court as expressed in its prior communication of this date, and as elaborated in the remarks of Mr. Randolph Harrison, before the joint session of the two Commissions.

It regrets, however, that the West Virginia Commission has not indicated, as they were requested to do, what questions other than the question of interest should be, in their judgment, considered by the two States.

The Virginia Commission further regrets that the West Virginia Commission has not seen fit to indicate or suggest an amount, the payment of which they would recommend as a final compromise and adjustment of the proportion of the debt to be borne by West Virginia, as the Virginia Commission specifically declared, through Mr. Harrison, that such proposal would receive most careful and respectful consideration, if the West Virginia Commission saw fit to take up that subject.

Now, responding to the proposal of the West Virginia Commission that a sub-committee of three should be formed from each Commission, with instructions to consider all matters involved, and so forth, the Virginia Commission respectfully says that it is agreeable to the appointment of such sub-committee, provided the matters to be considered by them are as indicated above, namely:

(1) The amount of interest which West Virginia should pay upon the sum ascertained by the Court in its decision to be West Virginia's share of the principal of the debt.

(2) Any proposal which West Virginia may deem proper to submit for the final compromise settlement of the proportion of the debt to be borne by West Virginia.

Provided, further, that said sub-committees be directed to meet on the ———— day of ————————, 1913, and report to an adjourned meeting of this joint conference to be held on the ———— day of ————————, 1913.'

And in reply to the last communication of the Virginia Debt Commission the West Virginia Debt Commission says that it is anxious to proceed with the negotiations but cannot consent to agree in advance that only the question of interest shall be considered, or that the West Virginia sub-committee shall be required to first submit a proposition looking to a settlement. This Commission is willing and anxious to approach a settlement upon equal terms, leaving, in the first instance, all questions of procedure to the said sub-committees.

This Committee did not understand the remarks made by Mr. Harrison today as a proposition. We considered only the written resolutions presented to us.

In reply to the remarks made by Mr. Harrison at the joint meeting today, and referred to in your communication, we would say that this Commission does not feel sufficiently acquainted with the questions involved—for reasons heretofore stated—to submit a proposition at this time, and asks that the whole subject matter be submitted to the sub-committees hereinbefore referred to, with the understanding that the said sub-committees be required to report their action for approval to their respective Commissions at a time in the near future to be now agreed upon."

On motion of Mr. Chilton the foregoing reply was made and the Chairman was directed to communicate it to the Virginia Debt Commission.

Subsequently, the Chairman reported that he had performed the mission assigned him.

Within a reasonable time after the delivery of the communication to the Virginia Commission the following reply was received through its Chairman, Mr. Moon:

"The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two Commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated, feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed."

On receipt of this reply the West Virginia Commission took the following action:

"Washington, D. C., July 25, 1913.

"The following communication was received from the Virginia Commission after 11 o'clock p. m.:

'The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two Commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed.'

Pending a consideration of the communication Mr. Miller moved that owing to the lateness of the hour at which the communication was received, the further consideration of the same be postponed until tomorrow morning, July 26th, 1913, at 10 o'clock, and that the West Virginia Commission adjourn until that hour.

Which motion was put by the Chair and carried by unanimous vote of the Commission at 12 o'clock midnight, and the Chairman of the Virginia Commission was notified of the adjournment by the Chairman of the West Virginia Commission.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Washington, D. C., July 26, 1913.

The West Virginia Commission met at 10 o'clock a. m., in the

"Cabinet Room" of the New Willard Hotel, pursuant to adjournment, and the Chairman and all the members of the Commission were present.

The following reply was made, through the Chairman, to the last communication received from the Virginia Commission last night:

"Washington, D. C., July 26, 1913.

"The Virginia Debt Commission on the part of the State of West Virginia received at 11:15 last night the following communication from the Virginia Commission:

'The Virginia Commission has given careful consideration to the last communication from the West Virginia Commission, stating, in effect, that the conference between the two Commissions must embrace a consideration *de novo* of the entire case, both as to the principal and interest involved.

The Virginia Commission for reasons heretofore repeatedly stated feels constrained to decline the terms proposed by the West Virginia Commission as the basis upon which the conference must proceed.'

In reply to the foregoing communication the West Virginia Commission regrets that the Virginia Commission has declined to submit the matters in question to a sub-committee, as heretofore proposed by the West Virginia Commission, and the West Virginia Commission now suggests that the two Commissions have a joint meeting on the ——— day of ——— at ——— for the purpose of further considering a settlement of West Virginia's proportion, if any, of the Virginia debt, proper to be borne by the State of West Virginia, and to arrive if possible at some adjustment thereof."

———

To which communication the following reply was received from the Virginia Commission, through Chairman Moon:

"The Virginia Commission have considered the suggestion of the West Virginia Commission for an adjournment of the conference between the two Commissions.

If it is the purpose of the West Virginia Commission to insist that the joint conference shall embrace a consideration *de novo* of the entire case, both as to principal and interest involved, then the Virginia Commission can perceive no advantage to result from further negotiations. The Virginia Commission cannot recede from their

views as heretofore announced to the West Virginia Commission in respect to the matters to be embraced in the conference between the two Commissions.

With this understanding it consents to the adjournment of the conference to Tuesday, August 12, 1913, at 10 o'clock a. m., at the New Willard Hotel, Washington."

The West Virginia Commission made the following reply to the above communication:

"Washington, D. C., July 26, 1913.

"The West Virginia Commission acknowledge receipt of the communication from the Virginia Commission concurring in the suggested adjournment upon certain terms and conditions, which terms and conditions the West Virginia Commission declines to be bound by. We, however, agree to the time and place of adjournment suggested by you and insist that this adjournment shall be and is without terms or conditions and without prejudice to the rights of either party."

The Chairman was directed to deliver the foregoing communication to the Chairman of the Virginia Commission, and subsequently reported to this Commission that he had performed the duty assigned to him by delivering the same to the Hon. John B. Moon, Chairman of the Virginia Commission, the Virginia Commission not being in session, they having separated before that time, as Chairman Mason was informed.

No reply being received, after waiting a reasonable time, on motion the Commission adjourned to meet at the New Willard Hotel, in the city of Washington, on the 12th day of August, 1913, at 10 o'clock a. m.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

DEFENDANT'S EXHIBIT "B"

Record of the Proceedings

OF THE

VIRGINIA DEBT COMMISSION

ON THE PART OF

WEST VIRGINIA, AND OF ITS

SUB-COMMITTEE

RECORD OF PROCEEDINGS

On the 21st day of February, 1913, the Legislature of West Virginia adopted the following, as Conference Committee's Substitute for House Substitute for Senate Joint Resolution No. 5:

"Creating a commission known as the Virginia Debt Commission, to provide for arranging and settling with the commonwealth of Virginia the proper proportion of the public debt of the original commonwealth of Virginia, if any should be borne by West Virginia, to take into consideration all matters arising between the commonwealth of Virginia and the State of West Virginia in reference to said original public debt, and to report its proceedings to the Governor of the State.

"WHEREAS, The commonwealth of Virginia instituted a suit in the Supreme Court of the United States against the State of West Virginia, to have the State of West Virginia's proportion of the public debt of Virginia as it stood before one thousand eight hundred and sixty-one, ascertained and satisfied; and

"WHEREAS, At the October term, one thousand nine hundred and ten, the Supreme Court of the United States made a finding that the share of the principal debt of the original commonwealth of Virginia to be borne by the State of West Virginia, as seven million one hundred and eighty-two thousand, six hundred and seven dollars and forty-six cents; and

"WHEREAS, Said court did not fully and finally decide the question involved, but suggested that such proceedings and negotiations should be had between the states upon all the questions involved in said litigation, as might lead to a settlement of the same; therefore, be it

"*Resolved by the Senate of West Virginia, the House of Delegates concurring therein:*

"That a commission of eleven members, known as the Virginia Debt Commission, is hereby created. The members of said commission shall be appointed by the Governor, two of whom shall be chosen from each congressional district of the State, and one at large, not more than six of whom shall belong to any one political party, and all resignations or vacancies in the said commission as they occur shall be filled by the appointment of the Governor.

"Said Commission is authorized and directed to negotiate with the commonwealth of Virginia, or with any person or committee owning or holding any part of the said indebtedness for a settlement of West Virginia's proportion of the debt of the original commonwealth of Virginia proper to be borne by the State of West Virginia.

"The Commission is hereby directed to ascertain and report upon and give the utmost publicity to all the facts in relation to the pending suit instituted against the State of West Virginia, which is owned or held or claimed to be due, at law or in equity, by the commonwealth of Virginia in her own right; and having made the investigation required hereby, said commission is authorized and directed to negotiate with the commonwealth of Virginia for a settlement of West Virginia's proportion of the debt of the original commonwealth of Virginia proper to be borne by the State of West Virginia.

"A majority of said Commission shall have authority to act. The Commission shall choose its chairman and appoint its secretary and other necessary officers.

"The expenses properly incurred by the Commission and its individual members, including compensation of said members at the rate of ten dollars per day for the time actually employed, shall be paid by the State out of the moneys appropriated for said purpose.

"The Commission shall make a report to the Governor as soon as practicable, and upon receipt of said report the Governor shall convene the Legislature for the consideration of the same.

"The Commission is hereby authorized to sit within or without the State and to send for papers and records and to examine witnesses under oath."

In pursuance of the authority vested in him by the foregoing resolution His Excellency, H. D. Hatfield, Governor, made the following appointments of members of the Virginia Debt Commission:

First Congressional District—John W. Mason, of Fairmont; Henry Zilliken, Wellsburg.

Second Congressional District—J. A. Lenhart, Kingwood; W. T. Ice, Philippi.

Third Congressional District—U. G. Young, Buckhannon; Joseph E. Chilton, Charleston.

Fourth Congressional District—R. J. A. Boreman, Parkersburg; John M. Hamilton, Grantsville.

Fifth Congressional District—W. D. Ord, Landgraff; Joseph S. Miller, Kenova.

At Large—W. E. Wells, Newell.

In obedience to a call of the Governor the Commission met in the capitol at the city of Charleston on Tuesday, the 10th day of June, 1913, and there were present: Mr. W. E. Wells, member-at-large; and Messrs. Mason, Zilliken, Lenhart, Ice, Young, Chilton, Boreman, Hamilton, and Miller, representing their respective districts as above noted.

Absent: Mr. W. D. Ord.

On motion of Mr. Hamilton, Hon. John W. Mason was elected Chairman of the Commission, by acclamation.

On motion of Mr. Boreman, Mr. John T. Harris was appointed Secretary.

The oath of office was administered to all the members present, and to the Secretary, by John C. Bond, a Notary Public within and for the county of Kanawha.

His Excellency, Governor Hatfield, and Attorney General Lilly, upon invitation addressed the Commission briefly as to matters it would be called upon to consider, and each gave assurances that he was ready to render all the assistance he could to further the work of the Commission. The Governor also stated that he would communicate with the Governor of Virginia and notify him of the meeting and organization of this Commission.

On motion of Mr. Young the Secretary was directed to extend an invitation to Ex-Governor W. M. O. Dawson and to Mr. George McClintic, of counsel on behalf of the defendant in the case of Virginia vs. West Virginia, pending in the Supreme Court of the United States, to meet the Commission in executive session at 2 o'clock this afternoon and give such information as they may have in relation to the status of the Virginia debt case, and answer any questions that the Commission may desire to propound.

Upon the further motion of the same gentleman a recess was then taken until 2 o'clock p. m.

AFTERNOON SESSION.

The Commission reconvened at 2 o'clock p. m., all the members being present but Mr. Ord.

In response to the invitation extended under the resolution proposed by Mr. Young this morning, Ex-Governor Dawson spoke briefly of his connection with the case of Virginia vs. West Virginia, and suggested that if the members of the Commission would read the briefs of counsel on final hearing, they would no doubt be better able to familiarize themselves with the case than in any other way.

Mr. McClintic spoke at length, giving a history of the case in its various stages from his earliest connection with it down to the time of the final hearing. He also quoted extensively from the record and answered many questions propounded to him by members of the Commission.

Mr. Young offered the following:

Resolved, That a sub-committee of three be appointed to ascertain and report at the next meeting of the Commission:

First—The status of the accounts between Virginia and West Virginia based upon the several theories of settlement which have been suggested as the proper basis of adjustment.

Second—The status of the accounts as shown by the Debt Commission of 1871.

Third—The status of the account as shown by the Senate Finance Committee of West Virginia of 1873.

Fourth—Which account, in their opinion, is the nearest correct and equitable, and their reasons therefor, and if none meets their views, to make up and report one of their own, with their reasons in support thereof.

Fifth—An outline of further procedure on the part of the Commission.

Sixth—Such other matters as they deem pertinent and proper.

The question being upon the adoption of the resolution, the same was propounded by the Chair and did not prevail, the vote being Ayes 4, Noes 5.

On motion it was

Ordered, That the Secretary be authorized and directed to have printed all necessary stationery for the use of the Commission and to provide a book in which the minutes of the meetings of the Commission shall be kept; also a book of blank warrants for the per diem and expenses of the members and any employes. It was further

Ordered, That all warrants shall be signed by the Chairman and Secretary.

On motion of Mr. Wells, the Commission then adjourned to meet at Charleston on Tuesday, July 22, 1913, at 10 o'clock a. m.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Charleston, West Va., July 22, 1913.

The Commission met pursuant to the adjournment of June 10th, and there were present

Messrs. Mason, (Chairman) Wells, Zilliken, Lenhart, Young, Chilton, Boreman, Hamilton, Ord and Miller.

Absent: Mr. Ice.

The oath of office was administered to Mr. Ord, (who was not present at the organization meeting) by John C. Bond, Notary Public.

The minutes of the last meeting were read and approved.

On motion of Mr. Zilliken the following was adopted:

Resolved, That a sub-committee of three be appointed by the Chair, whose duty it shall be to discover, if possible, the ownership of the Virginia Debt Certificates, and report the same to this Commission at a subsequent meeting.

Whereupon, the Chair appointed as members of the sub-committee Messrs. Zilliken, Wells and Young.

On motion the Commission then took a recess until 2 o'clock this p. m.

AFTERNOON SESSION.

The Commission re-convened at 2 o'clock, all the members being present but Mr. Ice.

The Chair submitted to the Commission a proposition to meet the Virginia Debt Commission, in conference, at the New Willard Hotel, in the city of Washington, on Friday, the 25th instant.

Pending a discussion of which Mr. Ord offered the following:

Resolved, That we ask the Virginia Commission to give us more

time in which to acquaint ourselves with the facts of the case of the State of Virginia against West Virginia.

The question being upon the adoption of the resolution the same was propounded by the Chair and the resolution was lost.

Messrs. Ord and Boreman requested that the record show that they voted in favor of the resolution.

Those who voted against it explained their votes by saying that as the time of the Washington conference had already been fixed by the Chairmen of the two Commissions, they did not deem it either wise or expedient to attempt a cancellation of the engagement, and that if the meeting resulted in nothing else, it would give the members of this Commission an opportunity to meet the members of the Virginia Commission and to become personally acquainted with them.

The question recurring upon the proposition to meet the Virginia Debt Commission, in conference, in the city of Washington on the 25th, after a further discussion of the matter it was decided that this Commission would attend the meeting and would leave the city of Charleston at 6:45 p. m. of the 23rd.

The question of counsel for the Commission coming up for consideration, Governor Hatfield being present explained that the Board of Public Works had made arrangements with Mr. Charles Edgar Hogg—in view of his previous connection with the debt case as counsel on behalf of the State, and of the fees that he had received—to contribute his legal services to this Commission without expense to it; which tender was accepted by the Commission.

On motion of Mr. Miller, Mr. George McClintic, one of counsel previously employed by the State in the case, was extended an invitation to accompany the Commission on its trip to Washington, on the basis of his actual expenses, to be paid out of the funds of the Commission, but no additional compensation to be paid him.

Subsequently, Mr. McClintic appeared before the Commission and after the resolution had been explained to him, stated that while he had been employed in the case, and had received compensation from the State, he felt that he had rendered services to cover the full amount of all money paid him, but that under the circumstances he would be willing to accompany the Commission on its trip to Washington on the basis of his actual expenses as proposed, but that he did not wish his action to be considered a precedent if any further services were required of him.

On motion, the Commission then adjourned until to-morrow morning at 10 o'clock.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Charleston, West. Va., July 23, 1913.

The Commission met pursuant to adjournment of yesterday.

Present: Messrs. Mason, (Chairman) Wells, Zilliken, Lenhart, Young, Chilton, Boreman, Hamilton, Ord and Miller.

Absent: Mr. Ice.

The minutes of the meeting of yesterday were read and approved.

(A paragraph here omitted refers to an account rendered by the Secretary for services and expenses, and the allowance of the same by the Commission.)

Mr. Hogg appeared before the Commission and in an informal way gave his views of certain matters involved in the debt suit, and stated that he would prepare and submit to the Commission at a later date a paper that might be of benefit to it in its future deliberations.

On motion the Commission then adjourned to meet in Washington to-morrow, July 24th, upon the call of the Chairman.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Washington, D. C., July 24, 1913.

The Commission left Charleston at 6:45 last evening and arrived at Washington at 7:30 this morning. Headquarters were established at the New Willard Hotel.

Upon the call of the Chairman a meeting was held in the "Gridiron Room" at 11 o'clock a. m., at which all the members were present with the exception of Mr. Ice.

United States Senator William E. Chilton appeared before the Commission in response to an invitation of the Chairman, and spoke briefly of the work it had in hand.

At the noon hour a recess was taken until 3 o'clock p. m., to meet in

the Census Committee Room of the United States Senate, at the capitol, upon the invitation of Senator Chilton, Chairman of that Committee.

AFTERNOON SESSION.

The Commission met, pursuant to the recess motion, at 3 o'clock, all the members being present but Mr. Ice.

Hon. William E. Chilton, United States Senator, Congressmen John W. Davis of the First Congressional District of West Virginia, William G. Brown of the Second Congressional District, and Hunter H. Moss of the Fourth Congressional District met with the Commission. Word was received from Senator Goff that he regretted his inability to attend, but that he would meet the Commission at 10 o'clock to-morrow morning at the New Willard Hotel. After an extended informal discussion of various questions involved in the debt case, an adjournment was had until 10 o'clock to-morrow morning at the New Willard Hotel.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Washington, D. C., July 25, 1913.

The Commission met pursuant to the adjournment of yesterday, all the members being present. Complying with an invitation heretofore extended him, United States Senator Nathan Goff met with the Commission, discussing the status of the case of Virginia vs. West Virginia and giving his views upon many questions involved in and arising out of the same. At the hour of 10:55 a. m., the Chairman announced that at 11 o'clock the Commissions from the two states would meet in conference.

JOHN W. MASON,
Chairman.

JOHN T. HARRIS,
Secretary.

Charleston, West Va., August 11, 1913.

Pursuant to a call of the Chairman the Commission met in the Governor's Reception Room, at the capitol, in the city of Charleston, on this day, at 10 o'clock a. m.

Present: Messrs. Mason, (Chairman,) Boreman, Zilliken, Hamilton, Young, Lenhart, Ord, Lee, Chilton, Wells and Miller, being all the members of the Commission. Also, Attorney General Lilly, Associate Counsel Hogg and the Secretary.

The minutes of the Washington meetings were read and approved.

CHAIRMAN MASON: After our meeting at Washington I learned through letters received from various members of the Commission, and otherwise, that this Commission would not be ready to meet with the Virginia Commission, at Washington, on the 12th day of August, pursuant to the adjournment of July 26th; and not desiring to put the members of the Virginia Commission to the inconvenience of going to Washington unless they desired to go, I sent the following telegram to the Hon. John B. Moon, Chairman of the Virginia Commission:

"Fairmont, West Va., Aug. 9, 1913.

"Hon. John B. Moon,
Charlottesville, Va.

Certain our Debt Commission will not be ready for meeting Tuesday. Members have not had time enough for investigation. We meet Charleston Monday and will have to ask that time be extended to a day in near future. Under these circumstances I suggest Washington meeting be now re-called. (Signed)

JOHN W. MASON."

On the same day that telegram was sent, I also wrote and mailed to Mr. Moon a letter of which this is a copy:

"August 9, 1913.

Hon. John B. Moon,
Charlottesville, Va.

Dear Sir:

Since returning from Washington the members of the West Virginia Debt Commission have been diligently investigating the problem submitted to them by the Legislature. They find that there are many things to be considered before we can have an intelligent settlement. You must bear in mind this Commission is composed of men who knew comparatively little of the subject and none of the members had ever studied the question in detail. Hence, we find that it will be utterly impossible to resume negotiations on the 12th of August as

intended when we separated at Washington. Therefore, I today sent you the following day letter telegram:

'Certain our Debt Commission will not be ready for meeting Tuesday. Members have not had time enough for investigation. We meet Charleston Monday and will have to ask that time be extended to a day in near future. Under these circumstances I suggest Washington meeting be now recalled.'

You will readily understand, I think, the magnitude of work before this Commission. In the first place you are no doubt aware that the people of West Virginia never considered that they owe anything, or, if anything, a very small amount. As indicating the sentiment of West Virginia I here quote a resolution adopted by the Constitutional Convention in 1872, offered by its Ex-Judge Samuel Woods, of Barbour County, as follows:

'*Resolved*, That there exists no just, legal or equitable claim against the State of West Virginia for the payment of any portion of the public debt of Virginia and that the existing provision on that subject in our present constitution ought no longer to exist.'

Judge Woods was a very prominent man at the time and had been a member of the Virginia Convention of 1861, and sympathized with the South and remained at or near Richmond during the entire war. He cannot be accused of having any prejudice against the old State. He was a man of large means, took great interest in public matters and served a long time as one of the judges of our Supreme Court.

In pursuance of this resolution that Convention did eliminate from the Constitution of 1863 Section 8, Article 8, which was the article authorizing the payment of our part of the Virginia debt, and the present Constitution, adopted in 1872, less than ten years after the organization of the State, not only ignores the payment of this debt, but by references to this history inferentially declares against it. I refer to these things to indicate the trouble there will be in convincing the people of West Virginia that they owe anything on account of this debt. This Committee having been appointed by the Legislature to inquire into and negotiate upon this subject, are exceedingly anxious to do so as intelligently as possible and without any references to preconceived notions except so far as the opinions formed at the time of the formation of the State, by men familiar with all the facts, may be regarded as correct. You, together with the members of your Commission, have gone over these questions fully and have had years of experience in acquiring the facts. We have had less than 60 days. We take it that before a satisfactory conclusion can be reached that we shall have to verify many statements, accounts and facts upon which the correct conclusion rests. This being a public matter and our duties being only advisory, we would not feel that we have done our duty to the public, should we make a proposition, accept or reject one, without

giving a reason therefor at least satisfactory to ourselves. I beg to assure you that we will pursue our investigations as rapidly as possible and as soon as we feel that we are prepared to talk the matter over with you intelligently, we will ask you to call your Commission together for that purpose. I hope this will be in the near future.

Very respectfully yours,

JOHN W. MASON.

(Signed)

JWM/S

To which telegram and letter no replies were received. Thereupon. The Commission directed Chairman Mason to call Mr. Moon by long distance telephone and inquire whether or not he had received the telegram, and what was the pleasure of the Virginia Commission.

Mr. Moon was called and replied to Chairman Mason that immediately upon receipt of the telegram of August 9th he had notified the members of the Virginia Commission that there would be no meeting at Washington on the 12th of August, and Chairman Mason suggested to Chairman Moon that a time be fixed for another meeting in the near future, and that the time be arranged by the Chairmen of the two Commissions, which was assented to by Mr. Moon.

On motion the Commission then took a recess until 1:30 p. m.

AFTERNOON SESSION

The Commission re-assembled at 1:30 o'clock p. m., all the members being present, together with Attorney General Lilly and Associate Counsel Hon. Charles Edgar Hogg.

Mr. Lilly read a paper prepared by Mr. Hogg and himself, supplementary to a former statement submitted by them for the use of the Commission, "On the Debt Case, together with Conclusions Deducible from the Opinion of the Court, rendered on what is Denominated a Final Hearing of the Case," also, another paper giving "Reasons why the Proportion of the Debt of Virginia to be assumed by West Virginia should be ascertained by the method prescribed by Section 9 of the Ordinance adopted in August, 1861."

Following the reading of the papers there was a discussion of the same by Messrs. Wells, Hamilton, Young, Lenhart and other members of the Commission, after which Mr. Wells offered the following resolution, which was adopted:

Resolved, That a sub-committee consisting of Messrs. Ord, Young

and Ice is hereby appointed to co-operate with the Attorney General and the associate counsel in this case, in drawing up the necessary data and statistics as a basis for propositions to be made to the Virginia Commission, and that either one, two or all of said sub-committee, at their convenience, are authorized to perform the work assigned them in connection with this matter.

On motion of Mr. Wells the Commission then adjourned to meet at the call of the Chairman.

.....

Chairman.

.....

Secretary.

Proceedings of the Sub-Committee

Charleston, West Va., August 11, 1913.

The sub-committee created by the resolution adopted by the Virginia Debt Commission at its meeting this day, met at 7 o'clock p. m., at the office of the Attorney General, in the capitol building, in the city of Charleston, to consider the duties imposed upon it by virtue of said resolution.

All the members of the sub-committee were present; also, Attorney General Lilly and Associate Counsel Hogg.

Thereupon, Mr. W. D. Ord was elected Chairman of said sub-committee.

After a general discussion of the duties of the sub-committee, on motion an adjournment was had until to-morrow morning, August 12, at 9 o'clock.

WILLIAM D. ORD,
Chairman Sub-Committee.

JOHN T. HARRIS,
Secretary.

Charleston, West Va., August 12, 1913.

The sub-committee met pursuant to adjournment of last night, all the members and the Attorney General and Associate Counsel being present. Further discussion was had as to matters and things that should be considered by this sub-committee, the members of the sub-

committee agreeing upon the respective investigations to be made, after which an adjournment was had to meet in the near future, at the call of the Chairman.

WILLIAM D. ORD,
Chairman Sub-Committee.

JOHN T. HARRIS,
Secretary.

Charleston, West Va., Sept. 18, 1913.

The sub-committee appointed under the resolution adopted August 11th, 1913, met in the city of Charleston, pursuant to call, on the 18th day of September, 1913, and there were present: Messrs. Ord, (Chairman) Young and Ice; also, Attorney General Lilly and the Secretary of the Commission.

Considerable time was spent in a discussion of the methods to be pursued in securing the necessary data and statistics upon which to base propositions to be made to the Virginia Commission.

The Chairman stated that he had been in conference with the Governor, the Board of Public Works and counsel representing West Virginia, and that it was unanimously agreed by them that in order to make an intelligent and proper offer to the Virginia Commission with reference to a settlement of West Virginia's proportion, if any, of the public debt proper to be borne, as based upon the suggestions contained in the opinion of the Supreme Court of the United States of the 6th day of March, 1911, that it would be necessary to obtain certain data, facts and information not disclosed in the present record, and that it would probably require further investigation by accountants; and it being represented to this sub-committee by the Board of Public Works that it is willing to secure such data and information upon which to predicate propositions of settlement as aforesaid, and that it will secure such data and information and furnish the same at the earliest practicable date, which will probably be within two or three months, the sub-committee expressed its desire to receive any and all information upon which an adjustment can be properly predicated.

The following preamble and resolution were offered by Mr. Young and adopted:

> WHEREAS, The sub-committee of the West Virginia Commission of the Virginia Debt Commission appointed to formulate a proposition of settlement to be submitted to the Virginia Commission, find it necessary to ascertain certain facts

and figures not in the record and not available from the record, which will take some time; therefore be it

Resolved, That the Hon. John W. Mason, Chairman of the West Virginia Commission, be requested to inform the Virginia Commission, by a letter directed to its Chairman, Mr. Moon, that we are diligently at work on a proposition to be submitted to the Virginia Commission, but that further time will be needed to complete it.

Whereupon, the Chairman of this sub-committee addressed the following communication to the Chairman of the Commission:

"Charleston, West Va., Sept. 18, 1913.

Hon. John W. Mason,
Chairman,
Fairmont, West Virginia.

Dear Sir:

I enclose copy of a resolution adopted by our sub-committee today. Also, draft of a letter to Mr. Moon, which you can sign and mail to him if it meets with your approval.

Yours truly,

(Signed) W. D. ORD.
Chairman Sub-Committee."

The draft of the letter to Mr. Moon above referred to is as follows:

"Fairmont, West Virginia, September 22, 1913.

Hon. J. B. Moon,
Chairman Virginia Debt Commission,
Charlottesville, Virginia.

My Dear Sir:

I am instructed by a sub-committee of the West Virginia Commission, appointed by the Governor of that State to negotiate a settlement, in accordance with the suggestions of the Supreme Court of the United States, of the controversy between the States of Virginia and West Virginia relative to the settlement of the Virginia debt, to say to you, and through you to the Virginia Commission, that the West Virginia Commission has in course of preparation a proposition (looking to a settlement) to be presented to your Commission at the earliest moment; but that it will yet require some three or four months time in which to put said proposition in final and intelligent form. I cordially endorse the recommendation of the sub-committee and hope it will be agreeable to your committee to consider the same favorably.

In the meantime, if your Commission should desire to sub-

mit any suggestions or propositions to this Commission, looking to the same end, we would gladly and without unnecessary delay consider the same.

With great respect, I remain,

Yours, etc.,

Chairman West Virginia Commission.

Secretary.

The sub-committee then adjourned to meet at the call of the Chairman, with the understanding that each member should diligently continue his investigations under the resolution raising this sub-committee.

Chairman Sub-Committee.

Secretary.

Teste:

JOHN T. HARRIS,
Secretary.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 2, Original.

COMMONWEALTH OF VIRGINIA,
COMPLAINANT,

vs.

STATE OF WEST VIRGINIA, DEFENDANT.

IN EQUITY.

NOTE OF ARGUMENT IN RESISTANCE OF COMPLAINANT'S MOTION THAT THE COURT PROCEED TO ADJUDICATE ALL UNDECIDED QUESTIONS IN THE CAUSE.

It is respectfully submitted that there are but two questions for consideration in the determination and decision of this motion. They are:

I. Is the West Virginia Commission making a present effort in good faith to negotiate a settle-

ment of West Virginia's equitable portion of the Virginia debt in accordance with the suggestion of this court? And,

II. If there be a present and sincere effort to that end on the part of the West Virginia Commission, does the fact that it is under the necessity of reporting back to the governor and legislature of the State of West Virginia the result of its negotiations emasculate the Commission and render its negotiations a mere idle and empty form?

The first question must be answered yes and the second no, and we shall undertake to briefly give the reasons therefor.

I.

ACTIVITY AND GOOD FAITH OF WEST VIRGINIA COMMISSION.

The response filed to the motion herein, together with the exhibits therewith, shows that the West Virginia Commission has not ceased its activities from the time of its organization, on the tenth day of June, 1913, to the present time, and that it is still active along the line of negotiation, notwithstanding the pendency of the present motion. Indeed, upon the very day that this motion bears date and before notice thereof had been served upon the State of West Virginia, the chairman of the West Virginia Commission, in consequence of

a resolution adopted by a sub-committee thereof, mailed a letter to the chairman of the Virginia Commission, informing him, and requesting him to so inform the Virginia Commission, "that the West Virginia Commission has in course of preparation a proposition (looking to a settlement) to be presented to your Commission at the earliest moment." The full text of this letter is as follows:

"FAIRMONT, WEST VIRGINIA,
September 22, 1913.

"Honorable J. B. MOON,
"*Chairman Virginia Debt Commission, Charlottesville, Virginia.*

"MY DEAR SIR: I am instructed by a sub-committee of the West Virginia Commission, appointed by the Governor of that State to negotiate a settlement, in accordance with the suggestions of the Supreme Court of the United States, of the controversy between the States of Virginia and West Virginia relative to the settlement of the Virginia debt, to say to you, and through you to the Virginia Commission, that the West Virginia Commission has in course of preparation a proposition (looking to a settlement) to be presented to your Commission at the earliest moment; but that it will yet require some three or four months' time in which to put said proposition in final and intelligent form. I cordially endorse the recommendation of the sub-committee, and hope it will be agreeable to your Commission to consider the same favorably.

"In the meantime, if your Commission should desire to submit any suggestions or

propositions to this Commission, looking to the same end, we would gladly, and without unnecessary delay, consider the same.

"With great respect, I remain,

"Yours, etc.,

"JOHN W. MASON,

"Chairman West Virginia Commission."

It likewise appears from the response to the motion that—

> "While its Commission" (the West Virginia Commission) "and the sub-committee thereof, together with the Governor and Attorney General of the State, were diligently and conscientiously using every effort which they reasonably could use, and while they were exercising due diligence and were proceeding with all deliberate speed to carry into execution the requirements imposed upon them by the joint resolution of the Legislature of the State of West Virginia of February 21, 1913, and while they were formulating a proposition to be made to the Virginia Commission, as requested by said Commission at the Washington conference hereinbefore referred to, to the end that the matters in controversy between the two States might be settled in accordance with the suggestion of this honorable court, made in its opinion rendered March 6, 1911, as interpreted by its opinion rendered October 30, 1911, the Commonwealth of Virginia served notice of the present motion." Par. 12 of Response.

These are the words of the State, spoken through its chief law officer, its Attorney General, and the

sincerity and truth thereof, we presume, will be conceded.

Nor is this all: The West Virginia Commission has not only been active and earnest, but the exhibits filed with the response show progress in the negotiations. At the joint conference of the Commissions of the two States, held at Washington on the 25th and 26th days of July, 1913, the State of Virginia had no proposition to make, and made none. At first, it contented itself with presenting to the West Virginia Commission a resolution declaring that the negotiations must be confined to the single question of interest; but, upon the demurrer of the West Virginia Commission, finally invited a proposition from that Commission looking to a settlement of the entire matter. This, we presume, meant a lump sum; but the West Virginia Commission, feeling that it was not sufficiently informed at that time to take such a step, declined to make any proposition. Thereupon, the joint session adjourned. Subsequently, however, the West Virginia Commission, after the appointment of a sub-committee, and after some consideration by that committee of the question, began the preparation of a proposition to be submitted to the Virginia Commission. This is evidenced by the letter of its chairman of the 22d of September, 1913, hereinbefore set forth; and it is submitted that this shows progress. It may not be as rapid as the Virginia Commission would like, but it must be borne in mind that the latter Com-

mission occupies a very different position from the former. The Virginia Commission has nothing to do but to receive, while the West Virginia Commission may be required to provide and to pay.

II.

EFFECT OF REFERRING RESULT OF NEGOTIATIONS BACK TO THE LEGISLATURE OF WEST VIRGINIA.

The fact that the West Virginia Commission is required by the resolution of its appointment to report, without further action, the result of its negotiations to the governor of that State does not destroy the utility of the Commission; because it would have been necessary to make this report in any event, whatever might have been the form of the resolution. Even if the two Commissions should agree upon a fixed sum in settlement, the West Virginia Commission would have no power to pay the same under the West Virginia Constitution, whatever the terms of the resolution appointing it. It could not draw its warrant upon the treasury of the State, nor could that power be delegated to it; and, even if it should, a probable lack of funds would render its draft worthless. Neither could it, nor any of the officials of the State, in the absence of legislative sanction, issue bonds for the purpose of raising money for the discharge of the decree agreed; and for it, or them, to do so would simply result in putting worthless securities upon the market.

Section 3 of article 10 of the present Constitution of West Virginia (1872) reads as follows:

> "3. No money shall be drawn from the treasury but in pursuance of an appropriation made by law, and on a warrant issued thereon by the auditor; nor shall any money or fund be taken for any other purpose than that for which it has been or may be appropriated, or provided. A complete and detailed statement of the receipts and expenditures of the public moneys shall be published annually."

And section 4 of the same article reads:

> "4. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion or defend the State in time of war; but the payment of any liability other than that for the ordinary expenses of the State shall be equally distributed over a period of at least twenty years."

See also section 5 of the same article:

> "The power of taxation of the legislature shall extend to provisions for the payment of the State debt and interest thereon, the support of free schools, and the payment of the annual estimated expenses of the State; but, whenever any deficiency in the revenue shall exist in any year, it shall, at the regular session thereof held next after the deficiency occurs, levy a tax for the ensuing year sufficient with the other sources of income to meet such deficiency, as well as the estimated expenses of such year."

But if it should be contended that the provisions of the present Constitution are not to govern, but that section 8 of article 8 of the Constitution of 1861, as being a part of the contract between the two States, should be looked to, then we find it reading as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

In any event, and under either Constitution, moneys can be drawn from the State treasury in only one way; and, wherever a debt is to be created (as by a bond issue) under section 4 of article 10 of the present Constitution, the payment thereof "shall be equally distributed over a period of at least twenty years," and under section 8 of article 8 of the Constitution of 1861 could be met only by providing "a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

It may be suggested, however, that these very difficulties only tend to show the inefficient character of the present West Virginia Commission, but not so. If the two Commissions should reach an

amicable and satisfactory adjustment of the controversy and the West Virginia Commission should report the result of such negotiations to the governor of that State and he should convene the legislature of his State, and transmit to it such report, with his recommendation added thereto, it would only be reasonable and proper to presume that the West Virginia legislature would confirm the report and take the necessary steps to carry it into execution.

It would be incorrect to say, as suggested by the representatives of the Commonwealth of Virginia, that this course would leave the whole matter at large and open up every question *de novo* for discussion upon the hustings and in the legislature, for it will be observed that the West Virginia resolution provides that—

> "The Commission shall make a report to the governor as soon as practicable, and, upon receipt of said report, the governor shall convene the legislature for the consideration of the same."

This means (unless unnecessary time should be consumed by the negotiation) that the members of the present legislature would be convened in extraordinary session by the governor, and that too before the election of the members of that body to convene in regular biennial session in the month of January, 1915. No election, therefore, would

intervene, and, being none, a discussion upon the "hustings" would not take place.

It is true that the West Virginia legislature, when convened to consider the report of the Commission, would have the power to disappoint us; but we can scarcely believe, and the court will not presume, that it would repudiate an equitable adjustment of this controversy.

OBSERVATIONS.

This court has proceeded with great caution in this case, that no injustice may be done to either of the high parties litigant. And when reference is made to the fact that this case has been pending for some years, it is not improper to say that there have been no unnecessary delays in the prosecution of this suit, but it has gone forward with that degree of speed consistent with the nature of the case and the requirements of justice. The court has been careful to avoid doing injustice to either of the parties, but desires that time for deliberation may be afforded and a conclusion reached without undue haste.

Should the Virginia Debt Commission reject the proposition for settlement, when made by the West Virginia Commission, then it will be time for the complainant to report this fact to this court, and move to expedite this cause. Until West Virginia has had a reasonable time, and has been afforded opportunity to respond to the suggestions of this court, in an intelligent, orderly manner, and has

had time and opportunity to comply with the requirements of the resolutions of the West Virginia Legislature, West Virginia will not be in default, and until such reasonable time elapses, a motion to speed this cause is premature, and to sustain this motion at this time, it is most respectfully submitted, would deprive this State of the right and privilege which this court has afforded her, of a peaceable adjustment of a quasi-international dispute.

It is therefore most respectfully submitted that this motion should, at this time, be overruled, or, it should be continued for a sufficient time to enable the West Virginia Commission to complete its labors, and to perform its duties, and it is suggested that not less than six months be given for that purpose.

Respectfully submitted,

A. A. LILLY,
Attorney General of West Virginia.

V. B. ARCHER,
CHARLES E. HOGG,
JOHN H. HOLT,
Of Counsel for West Virginia.

OCTOBER 13, 1913.